Officium Vicecomitum.

THE

Office and Authority

OF

SHERIFFS:

Gathered out of the STATUTES, and Books of the Common LAWS of this Kingdom.

By *Michael Dalton* late of *Lincolns* Inn Esq; and one of the Masters of the CHANCERY.

To which is added an *Appendix* or *Supplement*, containing a Collection of the *Statutes* touching Sheriffs made since Mr. *Dalton's* writing, which are in force and use at this day; also several special Returns of Writs, and the Expositions, Judgments, and Resolutions of the Reverend and Learned Judges, in the several Courts at *Westminster*; upon divers Statutes, Cases and Questions in Law relating to *SHERIFFS*; and several other new Matters.

The whole, being a work of great use and profit, not only to the Students and Practitioners in the LAW, but to all other the GENTRY of this Land, (on whom the burthen of this Office lyeth) especially to all immediate *High-Sheriffs* and *Under-Sheriffs*.

With a new and copious TABLE, wherein the defects and imperfections of the old Table are supplyed and amended.

The New matter is inserted likewise in the Table, under their proper Heads, and have this mark * set before them.

Purged from the Errors of all former Impressions.

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The Office and Authority of SHERIFFS, gathered out of the Law-Books and Statutes of this REALM.

CAP. I.

The Name, Antiquity, and Charge, &c.

Co. 9. 49. & 57. THE most eminent and supream dignity from the Conquest until the 11 year of Edward the Third, was the Earl or Countee, being anciently of the blood-Royal, and taking their names Comites à Comitatu, or (as some have it,) Comites nomen acceperunt à comitando, quia principem comitarentur ad bella publicaque negotia, ejus lateri semper hærentes: Or as another saith, Kings vouchsafed to call them Comites, Companions; for that both out of their love they will, and out of knowledge can, and out of courage (the true ground of ancient Nobility) dare to advise boldly and truly upon every occasion: And these were of ancient time Præfecti seu Præpositi comitatus, the Rulers or Governors of the Counties or Shires under the King, for so imports the Saxon words, scil. Shire Reve, id est, *Reve del Shire*, which is as much as Præpositus comitatus. And these Earls had ancienty committed to them from the King the charge and custody of the County during his Majesties pleasure, but afterwards when Estates for Life and Inheritance were granted of the Office, then the Vicecomites were made, who have the same Authority that the ancient Comites had, and at this day there are some Reliques of that Dignity, for he hath album baculum, and the Grant of the Office is Comissimus Vobis: and also he takes place of every Noble man during the time that he is in Office, and is a grand Conservator of the peace. Smith de Repub. Anglor. pag. 59. Comes.

Chune *ver.* Pyot. Rolls 1 R. 237.

And another ancient Writer says, That Ælfred first dividing this Kingdom into several Counties, (or Shires) instituted a Prefect or Lieutenant in every of those Counties, which then were called Custodes, Keepers, and afterwards Comites, Earls, who were to keep the County in Obedience to the King, and to suppress the Outrages of notorious Robbers. Speed 4.

Sir Edw. Cook, lib. 5. telleth us, that County is fetched from the French, and Shire from the Saxon, and in Latin it is called, Comitatus à Comitando, for accompanying together; for men of one County do accompany together at their County Courts, Tourns, Leets, and other Courts. And that there be in England 40 Counties, and in Wales twelve. (Ibid. 109. b.) Mr. Cambden, pag. 159. numbreth 39 Shires, and in Wales 13. So in all there here 52 Shires at this day.

So then County, Comitatus, signifieth as much as Shire; the one coming from the French, the other from the Saxons: Both containing a circuit, or portion of the Realm, into which the whole Land is divided, for the better Government thereof, and the more easie administration of Justice.

There is no part of the Kingdom that lieth not within some County.

Of these Counties there be four of special mark, and are termed County Palatines, as the County Palatine of Lancaster, of Chester, of Durham, and of Ely. And the chief Governors of these County Palatines, by especial Charter from the King, did heretofore all things touching Justice, absolutely, and in their own Name: But by the Stat. 27 H. 8. c. 24. this power of theirs is much abridged. Vaughan 418.

There be also Counties Corporate; and these be certain Cities, or ancient Boroughs, upon which Kings formerly have bestowed such extraordinary Liberties; as the Cities of London, York, and Chester, Canterbury, Kingston upon Hull, Lichfield, and Haverford, &c. Minsh. See Co. Littl. 109.

Every County is now Governed by a yearly Officer, whom we call a Sheriff.

But the three honourable names, titles, and dignities of Dukes, Marquesses, and Viscounts, they came in long after the Conquest: the name or title of Duke being no name of dignity in England, until the time of King Edward the Third, who first created his eldest Son Prince Edward (called the Black Prince) Duke of Cornwall, and after also created his other sons Dukes. Co. 9. 124. & Co. l. 69. Cambden 165.

And Marquesses, their title or name was not before the time of King Richard the Second; Robert Earl of Oxford being then made the first Marquess, as appeareth by Master Cambden in his Britannia, & Co. 9. 124.

And Dominus de Bello Monte, was the first Viscount, and Created by King Henry the VI. Co. l. 69.

Vicecomes. The Sheriff, Vicecomes, est vicem gerens, or the Earls Deputy, following and doing that service in the executing all matters of Justice, as the Earl should do. And ancient Kings ordained in every County these Sheriffs, to keep the Peace &c. when the Earls were absent from their charges: and for the administration of Justice to every man within each County; and to be attendant to the King, and his Justices for the executing of their Commands. Co. 7. 33. & 9. Preface. Il est un grand Conservator del' Peace. Rolls 1 R. 237.

It seemeth that Earls, by reason of their high imployments, and attendance upon the King, being not able to follow also the business of the County, were delivered of all that burthen, and only enjoyed the honour as now they do: and that labour was laid upon the Sheriff; so that now the Sheriff doth all the Kings business in the County: And the Sheriff though he be still called Vicecomes, yet all he doth, and all his Authority is immediately from and under the King, and not from or under the Earl. So then at this day the Sheriff hath all the Authority, for the Administration and the Execution of Justice, which the Countee or Earl had, the King by his Letters Patents now committing to the Sheriff Custodiam Comitatus. Co. 9. 49. See the Patent of his Office hic postea. Rolls 1 Rep. 237.

Master Cambden, pag. 160. thus describeth them; Every year some one of the Gentlemen Inhabitants, is made Ruler of the County wherein he dwelleth, whom we call in Latin Vicecomes, as one would say, the Deputy of the Comes or Earl, and in our Tongue, Sheriff, that is, the Reeve of the Shire.

And although the King by his Letters Patents granteth to the Sheriff Custodiam Comitatus, without any express words to make a Deputy, yet the Sheriff (qui gerit vicem Comitis) who cometh now in place of the Countee, may make his Deputy, his Subvicecomes, or Under-sheriff. But this Deputy hath not, or ought not to have interest or estate in the Office; but is only as a shadow of the Officer, and doth all things in the name of the Officer himself, and for whom his Grantor must answer, Co. 9. 48. B. *Subvicecomes*

And so the Under-sheriff hath not, or ought not to have any Estate or Interest in the Office it self; neither may he do any thing in his own Name, but only in the Name of the High Sheriff, who is answerable for him.

Laicocks Case, Latch. 187. Co. 9. 49. And agreeable hereunto is the Resolution in Laicocks Case in Latch 187. where a Writ was directed to the Sheriff, and delivered to the Under-sheriff, who was brought into the presence of the party which was to be arrested; and yet notwithstanding at the return of the Writ he returned Non est inventus. Whereupon an action was brought against the Under-sheriff for this false Return, and adjudged that it did not lie for the High-sheriff only, who is the Officer of the Court is chargeable, and not the Under-sheriff; and that for every default of the Under-sheriff the High-sheriff shall be amerced, but the High-sheriff shall not be imprisoned for the act of the Under-sheriff, nor endicted for any misdemeanour committed by him, but for other matters he shall answer for him.

In ancient time this Officer was called Seneschallus Vicecomitis; and in the Statute of Westminster 2. cap. 39. (made Anno 13 Ed. 1. & Anno Dom. 1285.) he is called Subvicecomes, and in the Statute made 11 Hen. 7. cap. 15. he is called the Shire Clerk, Co. 9. 49. Or the Clerk of the County, Dyer 355. See Mittons Case, Co. part. 4, & hic Cap. 118.

Note, that by the Common Law, he which hath an Office of trust cannot make a Deputy without express words in his Patent (or Grant) so to do, as appeareth in divers of our Books, Plo. 37. Litl. 379. Dyer 278. Br. Deputy 7, 9. 11 E. 4. fol. 1. &c. Now the Office of the High-sheriff is an Office of great trust and confidence, and therefore he cannot make any Deputy in such things as concerns his Judicial power; nor may Let, or Assign over his Office in any manner. And as for matters concerning his Ministerial Office, he may make and appoint under him his Under-sheriff, and other his Bayliffs and Deputies, who may occupy their places in the Right of the High-sheriff, and as his Servants only, as it seemeth.

Also the High-sheriff, as he is an Officer or Minister only, may make a Deputy concerning his Office, scil. He may make his Precept to another to arrest the party; or he may serve a Capias, or other Process by his Bayliff or servant, &c. But where the Sheriff is made a Judge of the cause (as well as an Officer) there he cannot make a Deputy, but there he must sit and execute the same in his own person, and not by his Under-sheriff, or other Deputy, otherwise the proceedings will be erroneous, 21 H. 6. 37. & 9 E. 4. 31. Br. Deputy 19, 20. See plus hic. Cap. 3, 4, 81, 93, 113. & 122.

And see hic, cap. 2. fol. Good advise to High-sheriffs, to keep their Office in their house.

Their Antiquity. Sheriffs were great Officers, and Ministers of Justice (as now they are) long time before the Conquest, Co. lib. 3. Preface, & 4. fol. 33. And by Doderidge Justice inter Graunge and Denny, Rolls 1. Rep. 364. that Sheriffs and Coroners are a Principio Regis.

Yet Master Cambden sheweth out of Ingulphus, that Sheriffs were first ordained of King Ælfred (or Alfred, otherwise called Alured in our English Chronicles) who Reigned about Anno Dom. 872. And that he first divided England into several Counties, and after caused the Counties (or Shires) to be parted into Centuries, which they now call Hundreds, and into Decimes, which they call Tythings, and that every English man living under Law as a Liege Subject, should be within one Hundred and Tything or another; and if a man were accused of any transgression, he should bring in straightways some one out of the same Hundred and Tything, that would be bound for his appearance to answer the Law; but he that could not find such a surety, should abide the severity of the Laws: and in case any man standing thus accused (either before, or after Suretiship) fled, then all that Hundred and Tything incurred a Mulct or Fine to be imposed by the King. He also divided the Governors of the Provinces (which before were called Vice Domini, that is, Vice Lords) into two Offices, to wit, Judges, now Justices, and Vicecomites, that is, Sheriffs, which still retain the same name: hæc Cambden, out of Ingulphus, and Malmsbury. Cambden, 158. Co. 9. Preface.

A Town is a Precinct, anciently containing ten Families, whereupon in some Counties they are still called Tythings. Finch 80.

Those Tythings contained each of them ten housholds, or ten persons, whereof every one was Pledge for anothers good Abearing (or Behaviour) who had one Chief called the Tythingman: And each Hundred had under their Verge ten such Tythings; and when any was chosen the chief of the Hundred, at the usual place of their meeting (after some reverence) every one with their Lances touched a Spear, which the Chief held upright in his hand, and by that Sign vowed to be peaceably Ordered, whence such a Society was called a Wapentake, (scil. a touching of Weapons.) Finch. 126. Vid. Co.l. 109.

Besides in these Wapentakes (or Hundreds) many affairs were handled, and what could not be there decided, was referred to a meeting of greater Jurisdiction, containing usually three Hundreds, called in some places a Lath; and what could not be there decided, was referred to the whole Shire: for dispatch of which greater affairs, King Alfred appointed both Judges, and Sheriffs (as aforesaid) in every County. Speed 4.

And yet Minsh. verbo Wapentake, saith; that Wapentake is all one with that which we call an Hundred: shewing the same out of Bracton, and Mr. Lambard, and the Laws of King Edward: And he further sheweth the reason of the Denomination, to be their touching of Lances or weapons as aforesaid: And that this word is at this day used, especially in the North Countries by the River Trent.

Facta etiam Ministrorum suorum diligenter investigavit, adeo ut quos ex avaritia, aut imperitia errare cognosceret, ab officio removebat. This King Alfred did also diligently search out the doings of his Officers, so that if he knew any of them to erre, either through covetousness, or unskilfulness, them he removed from their office. Fox 129.

Also this word Sheriff, or Shireve, is derived of two Saxon words, viz. of *Scyre*, that is, the Shire or County, and *Reve*, that is, Keeper or Guardian, and so *Scyre Reve* is the Keeper or Guardian of the Shire. Co. 4. 33. St. 9. 97. Co. L. 168.

But

But albeit the Saxons in their time gave this Officer the vulgar name used to this day, yet it is manifest that the Office was of ancient time, and before the Saxons set any foot in England. Co. 9. Preface. So also before the time of the Saxons coming into England, and long before the time of King Alfred, this Kingdom was divided into Shires or Counties, but King Alfred in his time made the most certain division of them; for where during the time of the Heptarchy, there were many incroachments one upon another, and many ancient bounds obscured, all these he reformed by his exact partition. Co. 9. Preface. Co. L. 168. *Their name proves not their Antiquity*

And Sir Edward Cook sup Littl. fol. 168. sheweth that Sheriffs, Shires, and Counties were long before, sc. in the time of the Romans, and before; and that by the Romans this Officer was called Vice Consul; the Romans calling that Consulatum, which we call Comitatum.

Rolls 1.R.237. The Sheriff then, as his name purports him to be the Keeper or Governour of the County, so to this day his Patent is, Commisimus tibi custodiam Comitatus; And thereby he hath not only the charge or keeping of the Kings Rights of his Crown within his County, but also the keeping of the Peace; And hath power to levy Posse Comitatus, sc. so many men as he shall think meet to go with him to apprehend Traytors, Felons, Riotors, and the like offendors against the peace; Or for to execute the Kings Writs or Process, or the Precepts or Warrants of the Kings Justices, &c. And also he hath the custody of all the common Gaols in the County now committed unto him: Besides he hath the Administration of Justice committed to him within his County, sc. within his Tourne to enquire of, and deal with matters touching the King himself, and with matters concerning the Commonwealth; as also in their County Courts to hear and determine perticular suits, and matters between party and party: for all which see hic postea. Cap. 106, 109. & 3. See Co. L. 168. saith, that the Sheriff hath triplicem Custodiam, viz. vitæ Justitiæ, vitæ Legis, & vitæ Reipublicæ, &c. vitæ Justitiæ, to serve process, and to return indifferent Juries for the trial of men lives, liberties, lands and goods: vitæ Legis, to execute process and make execution, which is the life of the Law: & vitæ Reipublicæ, to keep the Peace, &c. *Their charge.*

12 H.7. fol.17. So then at the first all administration of Justice was in one hand, scil. in the Crown, but afterwards (by reason of the multitude of people) the administration of Justice was divided into Counties, and the power was committed to one deputy within every County, scil. first to the Earl, and after (in his absence, and now still) to the Sheriff as is aforesaid, who was, and now also is appointed to be the Kings deputy to keep the peace; and that all the people should be obedient to him,
Chune & Pyot and ready at his command in defence of the Realm, when any of the
Rolls 1. R.237. Kings Enemies should come; he was and is appointed to be Conservator of the peace, and to suppress and punish malefactors within his County, and to defend the Realm when Enemies should come, and to be attendant upon the King in time of War, and to cause all the people within his County to go with the King for to defend the land against the Kings Enemies, &c.

Co. 4. 33. So that the High-sheriff (Vicecomes) is an Officer of great Antiquity, and of great trust and authority, having from the King the

custody

custody, keeping, command, and government (in some sort) of the whole County committed to his charge and care.

What manner of persons. And because this Office is of so great trust and confidence, it is meet that such persons as shall be chosen thereunto, be men of good sufficiency, and such as may attend it, lest otherwise the King be much indammaged, and his people disinherited, and oppressed; and to this purpose the Statutes made 9 Edw. 2. de Vicecomitibus. 2 Edw. 3. c. 4. 4 Edw. 3. c. 9. & 5 Edw. 3. c. 4. have ordained, that no man shall be Sheriff in any County, except he have sufficient lands within the same County (or Shire) where he shall be Sheriff, whereof to answer the King, and his people, in case that any man shall complain against them.

Neither shall any Steward, or Bayliff to any great Lord, be made Sheriff (except he be put forth of service) but such persons only shall be appointed, as may wholly attend to serve the King, and his people. Statute 9 Ed. 2. Lincoln.

Their Election. The High-sheriffs are to be chosen or assigned yearly by the Lord Chancellor or Keeper of the Great Seal, the Lord Treasurer of England, the President of the Kings Council, the Keeper of the Kings Privy Seal, and the chief Baron of the Exchequer, taking to them the chief Justices of the one Bench and of the other, as appeareth by the Statutes of 14 Ed. 3. cap. 7. & 21 Hen. 8. cap. 20. and afterwards are appointed by the King, whereas in former times they were chosen in the full Counties, by the Commons of the Country, as it appeareth by the Statute made 28 Ed. 1. c. 8. & 13. *Stat. 9 E. 2.*

And this Election or Nomination of the Sheriff shall be done yearly on the morrow after All Souls, at the Exchequer by the Statutes 9 Ed. 2. & 14 Ed. 3. c. 7.

And the Kings Letters Patents whereby the new Sheriffs are made, do commonly bear date the sixth day of November. *12 Ed 4. c. 1.*

And yet the King by his Prerogative may make and appoint the Sheriffs, without this usual Assembly, and Election, or Nomination in the Exchequer, as it happened, Anno 5 Eliz. vide Dyer 225. and is the daily practice at this day upon the death of any Sheriff.

Also the Sheriffs in every of the Shires of Wales, shall be nominated yearly, by the Lord President, Council, and Justices of Wales, and shall be certified up by them, and after appointed and elected by the King, as other Sheriffs be, 34 H. 8. c. 26.

Cannot be divided. The Office of a Sheriff cannot be apportioned or divided; and therefore when the King maketh or appointeth one to be Sheriff durante bene placito, although the King may determine this his Office at his pleasure, yet he cannot determine it in part, as for one Town or one Hundred, or any other part: neither can he abridge the Sheriff of any thing incident or belonging to his Office, for the Office is entire, and so it must continue in that intierty for the whole County, without any fraction or diminution (except it be by Act of Parliament, or that the King shall make some Town, &c. a County of it self, and shall appoint there a Sheriff, and all things belonging to a Sheriff within the same Town, &c.) Neither can the Office of a Sheriff be determined, *Co. 4. 33.*

determined, nor any part thereof, without and until a new Sheriff be made for the execution and administration of Justice (except it be by the death of the King, or of the Sheriff) Co. 4. 33. Finch. 12. See here postea tit. County Court, & hic c. 2.

CAP. 2.

2 & 3 Edw. 6. cap. 34. Now the first thing that every new elected Sheriff must do at the entrance into his Office, is, that forthwith before he receives his Patent, and before he doth exercise any part of the said Office, he must put in sufficient sureties by himself, or by his sufficient Deputy or Deputies, into the Kings Exchequer (sc. in the Kings Remembrancers Office there) and there must enter into Recognisance in such sum, and upon such conditions (as it seemeth) as the Lord Treasurer, and Barons of the Exchequer shall think meet, upon pain of every Sheriff making default therein, to forfeit to the King an hundred pounds to be levied of his lands and goods wheresoever, &c. by process to be made out by the said Barons, see the Statute of 2 & 3 Ed. 6. c. 34. 1. *He must enter Recognisance.*

And yet it seemeth, that the condition of such Recognisance is usually for the payment of the Sheriffs proffers, or for the making of his accompt in the Exchequer, which is twice in the year; that is to say, at or before mense Pasche, and mense Michaelis. See the form of his Recog. hic c. 124.

The High-sheriff (or some other for him) having entred into Recognisance with sureties in the Exchequer as aforesaid, his Attorney there will write him a note, thereby signifying that he is Sheriff of such a County, and that he hath entred Recognisance as aforesaid, The which note must be delivered to one of the six Clerks in the Chancery for his warrant to make the Sheriffs Patents by (sc. the Patent of his Office, with his writ of assistance:) And besides, a writ of discharge, to be delivered to his Predecessor, to discharge him out of his Office, the which would be delivered with all speed, for his own benefit or his Under-sheriffs; for until it be delivered to his Predecessor, the precedent Sheriff may do execution of all process. 2. *He must procure his Patents.*

The High-sheriff hath this authority given him by two Patents; by the one the King commits to him the custody of the County, by the other the King commands all other his subjects within that County to be aiding and assisting to the Sheriff, in all things belonging to his said Office.

The forms of the said Patents are as followeth.

The first Patent of his Office.

CArolus Dei gratia Angliæ, Scotiæ, Franciæ, & Hiberniæ, Rex, fidei defensor, &c. Omnibus ad quos præsentes literæ pervenerint salutem. Sciatis quod Commisimus dilecto nobis *A. B.* Militi Comitat. nostrum Cantabrig. cum pertinent' custodiend. quamdiu nobis placuerit, Ita quod firmas debitas nobis reddat annuatim, ac de debitis nostris, & omnibus aliis ad officium vicecomit' nostri prædict' spectant' nobis respondeat ad Scaccar' nostrum, in cujus rei Testimonium has literas nostras fieri fecimus patentes, Teste meipso apud Westm. die anno Regni nostri &c.

The Patent of Assistance.

CArolus Dei Grat' Angliæ, Scotiæ, Franciæ, & Hiberniæ, Rex, fidei defensor, &c. Archiepiscopis, Episcopis, Ducibus, Comitibus, Baronibus, Militibus, liberis Hominibus, & omnibus alijs de com. Cantabr. salutem. Cum concesserimus dilecto nobis *A.B.* Militi officium vicecom. nostri præd. cum pertinent', habend. quamdiu nobis placuerit, prout in literis nostris patentibus ei inde confectis plenius continetur, vobis mandamus quod eidem *A.B.* tanquam vicecom. nostro com. prædict' in omnibus quæ ad officium illud pertinent. intendentes sitis auxiliantes & respondentes. In cujus rei testimon. has literas nostras fieri fecimus patentes, Teste meipso apud Westm. die Anno regni nostri &c.

So that the Sheriff is made by Letters Patents of Record, and therefore if it shall come in question whether he be Sheriff, or not, that may be tried by the Record; or it may be tried by the examination of the Sheriff himself. 10 H. 4. 7. 32 H. 6. 27. Co. 9. 31.

The form of the Writ of discharge directed to the old Sheriff.

CArolus &c. dilecto sibi *R.S.* armig. ero nuper vicecom. Cantabr. salutem. Cum concesserimus dilecto &c. nobis *A. B.* militi Com. nostrum prædict' custodiend. quamdiu nobis placuerit, prout in literis nostris patentibus ei inde concess. plenius continetur, tibi præcipimus quod eidem *A. B.* com. nostr. prædict' cum pertinentiis, una cum rotulis, brevibus, memorand. & omnibus aliis ad officium vicecom. prædict. spectant', quæ in custodia tua existunt, per Indenturas inde inter te, & præfatum *A. B.* debite conficiend. liberes. Teste meipso apud Westmonaster, quinto die &c. Dyer 355.

And yet it seemeth by the Register fol. 295. that there be (or have been) two Writs or Commissions to this purpose: The first a Writ of discharge in these words.

Rex omnibus ad quos &c. salutem. Sciatis quod commisimus dilecto nobis *A. B.* &c. (who is the new Sheriff) com. nostrum Cantabr. cum pertinen. custodiend. quamdiu nobis placuerit &c. In cujus rei &c. Co. 3. 72.

And then another Writ is directed also to the old Sheriff, and the effect thereof is thus.

Et mandatum est *R. S.* amigero nuper vic. com. prædict. quod eidem

A. B.

A. B. milit' com. prædict' cum pertinentiis, una cum rotulis, brevibus, memorand' & omnibus aliis officium illud tangent', quæ in custodia sua existunt, per indenturas inde, modo debito conficiend' liberet custodiend' in forma præd. Teste &c.

Also every Sheriff before he shall take upon him to use or exercise his said Office, must take and pronounce the Oaths of Supremacy and Allegiance, and the Oath for the due execution of his Office. 3. *He must take these Oaths.*

The Oath of Supremacy the Sheriff is to take by force of the Statutes made 1 Eliz. c. 1. & 5 Eliz. c. 1. and also by the Statute made in 25 Car. Secundi Ca. 11. Entituled, An Act for preventing dangers which may happen from Popish Recusants.

The form of which Oath followeth.

Regist. 301. I *A. B.* do utterly testifie and declare in my Conscience that the Kings Highness is the only supream Governour of this Realm, and of all other his Highness Dominions and Countries as well in all Spiritual things or causes as Temporal, and that no forreign Prince, Person, Prelate, State, or Potentate, hath or ought to have any Jurisdiction, Power, Superiority, Preheminence, or Authority, Ecclesiastical or Spiritual, within this Realm, and therefore I do utterly renounce and forsake all forreign Jurisdictions, Powers, Superiorities, and Authorities, and do promise, that from henceforth I shall bear Faith and true Allegiance to the Kings Highness, his Heirs and lawful Successors, and to my power shall assist and defend all Jurisdictions, Priviledges, Preheminencies, and Authorities granted or belonging to the Kings Highness, his Heirs and Successors, or united or annexed to the Imperial Crown of this Realm: So help me God, and by the contents of this Book. *To the Supremacy.*

The Oath concerning the Office of the Sheriff, seemeth to be by the ancient Common Law of this Land, see Dyer folio 168.

The form whereof is as followeth.

YE shall swear, that well and truly ye shall serve the Kings Majesty in the Office of the Sheriff of the County of Cambridge, and do the Kings profit in all things that belongeth to you to do by way of your Office, as far forth as you can or may, you shall truly keep the Kings Rights, and all that belongeth to the Crown, ye shall not assent to decrease, to lessing, ne concealment of the Kings Rights, or of his Franchises, and whensoever you shall have knowledge that the Kings Right, or the Rights of his Crown been concealed or withdrawn, (be it in Lands, Rents, Franchises, or Suits, or any other things) ye shall do your true power to make them to be restored to the King again, and if you may not do it ye shall certifie the King, or some of the Council thereof, such as you hold for certain will say it to the King; ye shall not respite the Kings debts for any gift or favour, where you may raise them without great grievance of the debtors; ye shall truly and rightly treat the people of your Sheriffwick, and do right as well to poor as to rich, in all that belongeth to your Office; ye shall do no wrong to any man for any gift or other behest, or promise of goods, for favour, nor hate; ye shall disturb no mans Right; ye shall truly acquit at the Exchequer all those of whom ye shall any thing receive of the Kings debts, ye shall nothing take whereby the King may lose, or whereby the right may be letted or disturbed, or the *Concerning the Office.*

king delayed, ye shall truly return and truly serve all the Kings Writs as far forth as shall be to your cunning, ye shall not have to be your * Under-sheriff of any of the Sheriffs Clerks of the last year passed; ye shall take no Bayliff into your service, but such as you will answer for; ye shall make each of your Bayliffs to make such Oath as you make your self in that belongeth to their occupation; ye shall receive no Writ by you or any of yours unsealed, or any sealed under the seal of any Justice, save of Justices in Oyer, or Justices assigned in the same Shire where ye be Sheriff in, or other Justices having power and authority to make any Writs unto you by the Law of the Land, or of the Justices of *Newgate*; ye shall make your Bayliffs of true * and sufficient men in the County. * Also ye shall do all your power and diligence to destroy and make to cease all manner of Heresies and Errors, commonly called Lollaries, within your Bailywick from time to time to all your power, and assist and to be helping to all Ordinaries and Commissioners of the holy Church, and favour and maintain them as oftentimes as ye shall be required by the Ordinaries Commissioners: ye shall be dwelling in your own proper person within your Bailywick for the time ye shall be in the same Office, (except you be otherwise licenced by the King;) ye shall not let * your Sheriffwick, nor any Bailywick thereof, to any man; ye shall truly set and return reasonable and due issues of them that be within your Bailywick, after their estate and behaviour; and make your pannels * your self of such persons as be most next, most sufficient, and not suspect, nor procured, as it is ordained by the Statutes, and over this in eschewing and restraint of the Manslaughters, Robberies, and other manifold grievous offences that be done daily, (namely by such as name themselves Souldiers, and by other Vagrants, the which increase in number and multiply, so that the Kings Subjects may not sure ride nor go to do such things as they have to do, to their intollerable hurt and hinderance;) ye shall truly and effectually with all diligence possible to your power execute the Statutes, as the Statutes of *Winchester* and Vagabonds: All these things ye shall truly observe and keep, as God help you, and by the contents of this Book.

[Margin: * Nota.]

[Margin: * *Le residue del serement, que hic sequitur fuit insert de puisne temps, come appiert per le Register, fol. 321.*]

[Margin: * Note these words, *All Heresies and Errors, commonly called Lollaries*, were objected against by the Lord Chief Justice *Cook*, and Ordered to be left out of the Oath, Cr. *Car.* 18]

[Margin: * H. 4. c. 5. 23 H. 6. c. 10.]

[Margin: * Nota.]

By a Statute made in 25 Car. 2. ca. 2. he must receive the Sacrament, take the Oaths of Supremacy and Allegiance, and subscribe this following Declaration:

I *A. B.* do declare that I believe that there is not any Transubstantiation in the Sacrament of the Lords Supper, or in the Elements of Bread and Wine, at or after the Consecration thereof by any person whatsoever.

The parts of this Oath, as Sheriffs are shortly these.

[Margin: *The Kings Right.*]

1. **Truly to keep the Kings Rights of his Crown, (scz. his Lands, Rents, Franchises, Suits, and all other things within that County, belonging to the Crown) without lessening or concealment of them; or else to certifie the King, or some of his Council thereof.**

[Margin: *The Kings debts*]

2. **That he shall not respite the Kings Debts, where they may be raised without great grievance of the Debtor.**

[Margin: *Right to all.*]

3. **To do Right to all, as well poor as rich, in all things belonging to his Office.**

[Margin: *The Kings debtors.*]

4. **Truly to acquit at the Exchequer (upon his Accompt) all such of the Kings Debtors of whom he hath received any of the Kings Debts.**

[Margin: *Writs.*]

5. **Truly to serve and return all the Kings Writs.**

[Margin: *Under-Sheriff.*]

6. **Not to have to his Under-sheriff, any of the Sheriffs Clerks of the year last past.**

[Margin: Nota, & quære how Sheriffs perform these two parts of their Oath.]

7. To take no Bayliff, but such as he will answer for; and such as be true and sufficient men in that County. *Bayliffs.*

8. To make each of his Bayliffs to take an Oath, for the true exercise of his Office.

9. To receive no Writ unsealed: Nor any sealed, except by Justices having authority to make Writs unto him, by the Law of the Land. *Writs.*

Cr. Car. 18. Lord *Cokes* Case.

10. To suppress Heresies (called Lollaries) and therein to assist the Ordinary, being required. See hic Cap. 101. Some reasons why this Oath herein is fit to be amended, scil. the word Lollaries to be left out at the least. *Heresies.*

See the Stat. 4 H. 4. cap. 5.

11. To be dwelling in persons within his Bayliwick (or County) for the time he shall be in this Office, except he be otherwise licensed by the King. *To be resident.*

12. That he shall not let to Farm his Sheriffwick, nor any Bayliwick thereof. 4 H. 4. c. 5. & 23 H. 6. c. 10. *Not to farm.*

Note, that by this Letting to Farm, is understood the assigning or granting of the Profits of his Sheriffwick, or Bayliwicks, so as the Grantee by such Grant taketh (or may take) the profits to his own use. Vide hic cap. 3. & 117.

13. Truly to set, and return reasonable and due issues, after the estate of the persons. *Issues.*

* Or by his Under sheriff which is a sufficient performance. For qui per alium facit per se facit Cr. Car. 19.

14. To make the Pannels * himself; and of such persons as be next neighbours, most sufficient and not suspect, nor procured. *Juries.*

15. Truly and effectually, with all diligence to execute the Statutes of Winchester and of Vagabonds. *St. Winch.*

Concerning this last part of this Oath, the Statute of Winchester (made 13 Edw. 1.) commandeth that fresh suit be made, from Town to Town, and from County to County, after Felons (scil. upon Robberies, Murders, Burning of Houses, and other Felonies committed:) And that Night-watches be duly kept, for the arresting of suspected persons, (who are to be delivered to the Sheriff;) and that High-ways be inlarged, that Felons and evil-Doers may not lurk therein to do hurt, &c. and of all these things the Sheriff is to Enquire in his Torne: see hic postea tit. Torne.

Now what else the Sheriff may or ought to do in these Cases; It seemeth by the Statute of Winchester, c. 1. 2, & 4. and by the Statute made 5 Ed. 3. cap. 14. That if any person suspected for Felony shall be apprehended by the Country, upon such fresh Suit or Huy and Cry; or that any suspected person shall be arrested by the Constables or Townsmen upon their Watches by day or by night, and that such persons shall be delivered to the Sheriff, he then ought to inroll the same (F. Coro. 345.) And the Sheriff may receive them without damage, and shall keep them safely (and may commit them to the Gaol) until they shall be acquitted in due manner, scil. until the coming down

of the Justices assigned to deliver the Gaol; (otherwise it shall be adjudged an Escape in the Sheriff:) and in the mean time the Sheriff shall inquire of such Arrests, and at the coming of the Justices they must Return such Enquests before the Judges of Gaol-delivery, which they have found, and the cause of the taking, with the bodies of such Offendors; but Quære whether the Sheriffs shall enquire of such Arrests &c. in their Torn, or where else; for if it be in their Torn, then by the Statute, 1 Ed. 4. cap. 2. they must deliver their Indictments to the Justices of Peace at their Sessions: see hic, tit. Torne. Again, the Justices of Peace do now usually deal with such Offendors, so as the Sheriffs are not * now troubled with them; either to Inroll, or Commit, or to Enquire of these Offendors, otherwise then in the Sheriffs Torne, as it seemeth. * Nota.

Also by the Statute of Winchester, cap. 6. Sheriffs are commanded to follow the Huy and Cry with the Country, and to keep Horses, and Armour so to do, quod nota.

Note further, that by this Statute of Winchester, cap. 1. It was commanded that Cries should be solemnly made in all Counties, Hundreds, Markets, and Fairs, &c. The meaning whereof was, that Proclamation should be made in all Counties, and in all places where great assemblies of people should be, to warn them of this Statute of Winchester, and of the pain therein contained, so as none might excuse themselves of ignorance, &c. But by the Letter of this Statute Proclamation was appointed to be made but once, which was executed presently after the making of this Statute: so that by force of this Statute, no such Proclamation is to be made at this day. But for that this Statute is one of the most beneficial that ever was made for the suppressing of Robberies and Felonies; therefore by another statute made not long after, scil. 28 Ed. 1. cap. 17. It was Ordained, that the said statute of Winchester should be sent again into every County to be read and published four times in the year, &c. Afterwards, for that these Malefactors and mischiefs did still more and more increase, King Richard the Second sent the same statute of Winchester again to be proclaimed in every County: And besides, by a statute made in the seventh year of his Reign (being now still in force) he further Ordained, that every Sheriff of England should in person four times in the year, proclaim the statute of Winchester in every Hundred of his County, and in every Market-Town, by his Bayliffs, as well within Liberties, as without: and this statute of 7 R. 2. doth further ratifie and confirm the said statute of Winchester in all points: Quære for the use. 7 R. 2. c. 6.

But what the Sheriffs stand bound to do by this last Article of their Oath concerning Vagabonds: (Or by their Office, by vertue of any statute now in force) save only to arrest and commit them as suspected persons. See hic cap. 4. Quære, Considering that by the statute of 39 Eliz. cap. 4. All former statutes made for the punishing of Vagabonds, are now repealed: And by that statute of Repeal (nor by any other since) Sheriffs have no Authority, nor any thing now to do concerning them.

Before whom the Sheriff shall take his Oaths.

THe High-sheriff ought to take these Oaths (to the Supremacy, and for the due execution of his Office) before one of the Judges of the Assizes of that Shire whereof he is Sheriff, or before one of the Masters of the Chancery; and this should be done (scil. these Oaths should be taken by the Sheriff) so soon as his Patents be made (if the Sheriff be then in London,) for until he be sworn he may not intermeddle, nor take upon him to use or exercise his said Office: or else the Lord Chancellor or Lord Keeper of the Great Seal of England may make and direct a special Commission (viz. a Writ of Dedimus potestatem) under the Great Seal of England to any two Justices of Peace of the same County, whereof one must be of the Quorum, giving them Authority thereby to tender and administer the said Oaths to the new Sheriff in the Country, and this now is usual. Wilk. 4.

And yet it seemeth such a Dedimus potestatem may be directed to any other person or persons: See Dy. 168 Bronkers Case, where a Dedimus (for this purpose) was directed to one Hide only; and so it is used in all the Shires of Wales, as may appear by the Statute made Anno 34 Hen. 8. cap. 26.

This Dedimus potestatem they may have from the Clerk of the Chancery which made the Patents.

But such Commissions to whom such a Dedimus potestatem shall be directed to take these Oaths, must certifie the same into the Chancery, at such day as the Writ commandeth them.

And the Certificate or Return of such Dedimus potestatem may be in this sort following.

The Return of a Dedimus potestatem, *to take the Oath of a* Sheriff.

VIrtute istius brevis nobis directi (tali die, & Anno &c. infrascript') recepimus Sacrament' infranominat' *A. B.* vicecom. Cantabr. de officio illo bene & fideliter faciend' juxta formam cujusdam schedulæ, præsentibus annex' prout interius nobis precipitur ac prout breve istud in se exigit & requirit.

F. B. & *M. B.* } *Commission'*

Executio istius brevis (or Commissionis) patet in quadam Schedula huic brevi annexa. *Aliter.*

Nos *F. B.* & *M. B.* in Cancellariam Domini Regis humillime certificamus, quod virtute brevis Domini Regis nobis direct' & huic schedulæ annexat', quarto die mensis Decembr. Anno regni dicti domini nostri *Caroli* Dei gratia Regis *Angliæ*, &c. apud *C.* in Comitat' Cantabr. recepisse Sacrament' *A. B.* militis (in breve prædict' nominat') tam de officio vicecom. in dicto com. Cantabr. bene & fideliter faciend' juxta formam schedulæ, *Schedula.*

brevi

brevi prædict' annexæ, quam Sacramentum specificat' in actu Parliamenti Anno regni domin' Elizabethæ, nup. Reginæ Angliæ &c. primo fact' secundum tenorem brevis, & schedulæ brevi prædict' similit' annex', & in omnibus prout in prædict' brevi præcipitur.

F. B.
&
M. D.

These Oaths of the High-sheriff may be taken before one of the Masters of the Chancery (without any Dedimus potestatem:) For a Master of the Chancery may ex officio (as it seemeth) take any Oath which is Retornable into the Chancery. As (in common experience) if a Bill put into the Chancery against J. S. he may either have a Dedimus potestatem, directed to any person to take his answer in the Country: or else he may go before any Master of the Chancery, who, ex officio, may, and usually do take the Defendants answer, and Retorn the same, &c.

I have also known a Master of the Chancery take these Oaths of the Sheriff; and then the Retorn thereof may be made as followeth.

Cantab. Ego Johes' Eden Magistr. Cancellar. in Cancellar. Domini Regis certifico, me die Novembr. Anno regni Domini Regis Caroli, Dei gratia Angliæ, Scotiæ, Franc. & Hiberniæ, 12 apud Newmarket in Com. Cantabr. recipisse Sacrament. Joh. C. Baronet. vicecom. Com. præd. Tam de officio vicecom. in dicto Comit. bene & fideliter faciend. Quam Sacram. specificat. in actu Parliamenti Anno regni Dom. Elizab. nup. Reginæ, Angliæ, &c. Primo fact. In cujus rei testim. huic presenti certific. Sigillum meum apposui. Datum &c. apud Newmarket, Die & Anno supradict.

I. B.

And if such Commissioners shall return the Commission (or Writ) and the Oaths to be taken, when they were not taken, this is finable in the Star-Chamber, Dyer 168.

Anno 1 Eliz. Bronker Sheriff of Wilts was sued for perjury in the Star-Chamber (by information at the Queens suit) for a false return by him made of Sir John Thinne to be Knight of the Parliament for the said County, whereas in truth one Penruddoke was chosen by the greater number of Freeholders in the said County (in deceipt of the Country, and whole Realm) and it did appear upon examinations taken, that (the Sheriff) Bonker was never sworn to execute his Office, although there were a Dedimus potestatem directed to one Hide to give Bronker his Oath, but Hide had disswaded him from taking his Oath in regard of the difficulty of the Articles or matters therein contained; and this matter by grave resolution and in the honourable and great assembly of the Star-Chamber was decreed against Bronker in manner following, that is to say, first for the contempt of the ancient Law (sc. that every Sheriff was to take such an Oath, in incepto officii, in the beginning of his Office, or before he should execute his Office) Bronker was adjudged to pay for his fine to the Queen an hundred pounds, besides the imprisonment of five weeks; and also he was adjudged to pay another hundred pounds to the Queen accord- Dyer 167.

ing

ing to the Statute for his false return and to be imprisoned for one year without bail; and Hide was fined at twenty Marks besides imprisonment: And also Bronker and Penruddoke were bound by Recognisance, to stand to the Arbitremet of four of the Noble men for the hundred pounds due to Penruddoke.

So if the Sheriff shall exercise, use, supply, or occupy, his said Office, before he hath taken both these Oaths (i.e. to the supremacy, and concerning his Office) he is finable in the Star-Chamber, Dyer 168.

Also if the Sheriff shall not perform his Oath concerning his Office in every behalf, he shall not only be in danger of perjury, but also to be fined &c. in the Star-Chamber, see Dyer 61. & 168.

Yet see Co. 11. 98. That a man shall not be charged in any Court Judicial, for the breach of a general Oath, which he taketh when he is made an Officer or Minister.

There is a third Oath tending to the declaration of that duty, loyalty and obedience, which every well affected Subject, by the Law of God, and bond of allegiance, ought to bear to his Soveraign, *The Oath of Allegiance.*
15 Car. 2. c. 2. which Oath is by force of the Statute 3 Jacobi Regis cap. 4. And is to be taken by all Sheriffs (and other Officers and Ministers of Justice) whensoever it shall be lawfully tendered to them; and this is to be taken (by the Sheriff) before one of the Chief Justices (of
Jac. c. 6. the Kings Bench or Common Pleas) or before one of the Justices of Assise of the same County, whereof he is Sheriff, or before such other person as the Lord Chancellor or Keeper of the Great Seal shall thereto authorise, by Commission or Writ of Dedimus potestatem.

The form of Oath of Allegiance you may see at large, in the Stat. 3 Jac. c. 4.

After that the Sheriff hath taken the said Oaths to the Supremacy, and for the due execution of his Office, then upon the Writ of discharge delivered to (his predecessor) the old Sheriff, (or at or before the first County Court to be kept by the new Sheriff) the new Sheriff must take over from the old Sheriff, all his prisoners, 4. *He must take by Indenture the prisoners and writs.*
Crom. 203. Co. 4. 72. a. (which are in the Gaol by their names,) and all his Writs, precisely, by view and by Indenture to be made between the old Sheriff and the new Sheriff; in which Indenture all the causes which the old Sheriff hath against every prisoner, must be set forth and delivered, at the peril of the old Sheriff, or else the new Sheriff needs not to take notice of any that is omitted and left out of the Indenture; for he is not chargeable with it, but the old Sheriff, only as it appeareth in Westbies Case (Co. 3. fol. 72.) against the Sheriffs of London where the case was this: one Buston was in execution under the custody of (Skinner and Hatcher) the Sheriffs of London, as well at the suit of one Dighton, as at the suit of Westby the plaintiff, and the said Skinner and Hatcher the defendants, at the end of their year, delivered over the body of Buston (amongst other prisoners) to the new Sheriffs by Indenture, in which Indenture the execution at the suit of Dighton was mentioned, but the execution at the suit of Westby the plaintiff was omitted, and after Buston escaped, and it was adjuged that the old Sheriffs (Skinner and Catcher)

Co. 3. 72. *Westby* vers. *Skinner*, Cr. El. 365. Rolls 2. part 457. *Chandler* vers. *Thompson*, Hob. 266. *Egerton* vers. *Morgan* & al' *Bulstrode* 1. part. 70. usque 79. *Smalman* vers *Lane*, Leon. 2. part. 54.

Escape. Catcher) should be charged with this escape: for when the body of Buston was delivered to the new Sheriffs as to execution at the suit of Dighton only, Buston was thereby out of custody of the new Sheriffs for the execution of Westby, for that the prisoner was not delivered to the new Sheriffs (nor they charged with him) for the execution of Westby, the plaintiff; and although Buston were still within the Gaol (at the suit of Dighton) yet this was adjudged an escape, in Law, as to Westby, for that Westby (in whom there was no default) ought not to be without remedy in this case.

Also in this former case of Westbies, it was resolved, that until the prisoners be delivered to the new Sheriff, they remain in the custody of the old Sheriff, notwithstanding the new Letters Patents made to the new Sheriff, and the writ of discharge, and the writ of delivery directed to the old Sheriff. Yet see hic infra, that the old Sheriff is punishable for detainour of his prisoners, after his writ of discharge delivered to him. Co. 3. 72. Vide Dyer 335.

Also it was there resolved that the old Sheriff ought to give notice to the new Sheriff of all and every the executions, which are against any prisoner in their custody, although the executions be of Record; *Notice.* and that the new Sheriff is not to take notice of them at his peril, but shall be charged only with such whereof the old Sheriff gives to the new Sheriff notice.

If the old Sheriff shall give notice to the new Sheriff, of the executions which are against any prisoner by word only, or by some note in writing under the old Sheriffs hand, or under the hand of his Under-sheriff, and not by Indenture, and the new Sheriff be content to accept of such notice, it seemeth sufficient, for volenti non fit injuria; And yet the new Sheriff may compel the old Sheriff to make such delivery by Indenture; and so run all the Writs, de Brevibus & Rotulis liberandis, in the Register, see hic fol. Co. 3. 72. Regist. 295.

The Sheriff hath one in execution for debt, in another mans house (and not in the Gaol) and the new Sheriff will not receive the prisoner at that house, but in the Gaol, and after the old Sheriff hath a Writ of discharge delivered to him, there the prisoner is presently out of execution, and this is an escape in the old Sheriff, and if he shall detain him after that he hath his Writ of discharge, the prisoner may have his action of false imprisonment against the old Sheriff. Cromp. 204.

And so note, that the new Sheriff is not bound to receive the prisoners from the old Sheriff but only at the Gaol, and in no other place, And yet if the old Sheriff shall deliver his prisoners to his Successor when he is chosen, who receiveth the prisoners out of the Gaol, the old Sheriff shall be discharged by this delivery. See 11 R. 2. fitz. Atturney 61. Where the old Sheriff had taken a prisoner upon a Capias utlagatum, and had delivered him to his Successor when he was chosen, (who received him, and was possessed of his body) but he had not the body at the day, &c. Here the old Sheriff was discharged. Cromp. 214. Cromp. 214.

But

But it was in Welibies Case resolved, that if a Sheriff hath in his custody divers persons in execution, and dieth in the time of his office, and after a new Sheriff is made, here the new Sheriff at his peril ought to take notice of all the executions which are against any person which he finds in the Gaol: but this is by reason of the necessity, for that there is no person to make delivery to him of them, or to give him notice, and besides the new Sheriff may take notice himself of all executions, they being upon record.

Also in the former case the Sheriff (it seemeth) is to take notice of all other prisoners in the Gaol, and of the causes of their commitment; and so the new Sheriff (upon the death of the old Sheriff during the time of his Office) is chargeable without either delivery of the Prisoners, or notice of the causes of their commitment.

And so it seemeth for the delivery of the Writs, upon the death of the old Sheriff during the time of his Office, the new Sheriff is to take notice of all other Writs, (and of the contents thereof) which shall be in the hands of his Predecessor, or of his Under-sheriff.

Also in the afore recited Case, it was resolved, that if a Sheriff die in the time of his Office, and before that another is made Sheriff, there if a prisoner who is in execution shall break the Gaol, and escape, and go his way, yet this is no escape, for that by the death of the Sheriff, all his prisoners were in the custody of the Law, until a new Sheriff be made; and the prisoner may be taken again in execution at any time after, wheresoever he shall be found. *Escape.*

But if such prisoners shall be in the Gaol at such time as the new Sheriff is made, there the new Sheriff (so soon as he is appointed by the King, or at least so soon as he hath received his Patent) seemeth to be chargeable presently with them, without any delivery, or notice, made or given to him, of the said prisoners, or of the causes of their commitment; and if such prisoners shall after get out of the Gaol, this is an escape; yet if it be without the consent of the new Sheriff, or his Gaoler, then they also may be taken again at any time after. See hic postea, cap. 29.

Note also, that by the death or Resignation of the King, the authority of the Sheriff (and of all his Officers) doth determine and cease, Co. 7. 30. Dyer 165. And therefore it is used presently (in the next Kings time) to sue out new Patents of this Office, and of assistance. Br. Office 25. Co. 7. 30. But if in the interim between the death or Resignation of the King, and the time that the Sheriff shall sue out his new Patent, a prisoner shall break the Gaol and escape, yet it seemeth that the Sheriff is chargeable for this escape; for he having the prisoner once in his Gaol, although by the death or Resignation of the King, the Sheriff can execute no Proces, &c. until he hath sued out his new Patent, yet he is safely to keep all the Kings Rights of the Crown which shall then be in his custody, and also all prisoners; and as he may justifie the detaining and keeping of all prisoners committed to him before, and then in his custody, so he may, nay ought at his peril to make his Gaol safe, so that his prisoners escape not.

The form of an Indenture for setting over of prisoners, and Writs between two Sheriffs.

THis Indenture, &c. Between *R. S.* Esquire, late Sheriff of the County of *Cambridge* of the one part, and *A. B.* Knight, now Sheriff of the said County on the other part, witnesseth, that the said *R. S.* by vertue of His Majesties Writ of discharge of his late Office) to him directed, hath delivered and set over unto the said *A. B.* these Writs following, that is to say, A *Capias versus W. F. retorn. Octab. Hillarii ad sectam Johannis Smith &c.* Together with the bodies of *Jo. N.* in execution at the suit of *G. H.* for a debt of twenty and two pounds, and *J. H.* at the suit of *C. D.* in execution for ten pounds, and *R. G.* in execution as well at the suit of *Jo. Dighton* for a debt of one hundred pound, as also at the suit of *N. West* for a debt of forty pound, &c. In witness whereof, &c.

All the Writs which are set over in the Indenture between the Sheriffs, if they have been executed by the old Sheriff, then they must be turned by him or in his name, and indorsed, or subscribed under by the new Sheriff thus:

Istud Breve prout indorsatur mihi deliberatum fuit per *R. S.* Armiger. nuper vic' prox' prædecessor. meum in exit' ab officio suo. Palmer *versus* Marsh, Tr. 39 El. B. R. Rolls 2 part. 457. *Igerton* vers. *Morgan* & al' *Bulstrode*, 1. part. 70. usque 79. Dyer 355.

A. B. miles Vicecom.

If the Writ of discharge of the old Sheriff be brought into the County and delivered to the Clerk of the County (or High-sheriff) sitting in the County Court in the absence of the High-sheriff, Quære whether the old Sheriff be thereby discharged of his Office ipso facto, or not: it seemed to Manwood and Dyer, that the High-sheriffs Authority ceased by such publick delivery, of the Writ of discharge in the County Court, where every man is bound by Law to take notice, but yet if by such delivery of the Writ the old Sheriff be discharged, then there shall be an escape in the old Sherift of his prisoners, against his will, for the old Sheriff by intendment was ready to deliver them, &c. Ideo quære Cromp. 203.

Also by the words of the Statute of 12 Edw. cap. 1. it seemeth that the old Sheriff may execute his Office, until his Writ of discharge be delivered to him: see also the Statute of 17 Edw. 6. hic postea, cap. 3.

[A]pres son discharge son act [vo]id. But if the old Sheriff after he is discharged, &c. shall make his Warrant or Precept to any of his (late) Bayliffs, or Officers to Arrest another, and the Officer by force thereof shall Arrest the party, an action of false imprisonment will lie against both the Sheriff and Officer for such an Arrest. Cromp. 205.

The old Sheriff Retorned the Proclamation upon an Exigent, after that he was discharged of his Office, and by the Judgment of the Court the Outlary was void, and the party was discharged. Dyer 41.

What

What Retorn or other act, the old Sheriff may do, after that the new Sheriff is chosen.

A Habeas Corpus was delivered to the Sheriff of N. before the day of the Retorn, whereof the new Sheriff took the Office upon him, and the old Sheriff having before served the Writ, brought it into the Court, and there shewed that the new Sheriff would have embezelled the Writ to have caused the old Sheriff to have been amerced: whereupon the new Sheriff was called, and the Writ so served was delivered to him in Court, and a special entry thereof made in discharge of the old Sheriff, &c. 22 E. 4. t. Retorn. 33. But now all Writs are by view and by Indenture precisely to be set over by the old Sheriff to the new. Ut patet hic antea.

If the Retorn of the old Sheriff happen to be Erronious, and that a new Sheriff be chosen, yet the Court may cause the old Sheriff, or his Under-sheriff, Clerk, or Deputy, to amend the same. 33 H. 6. t. Amendment 40. see hic c. 41.

Cr. Jac. 73. Rolls tit. Execut' 893. I have seen a Report of a Case adjuged in Anno 44 Eliz. Rot. 308. between Ayer and Aden, M. Ayer being possessed of certain Made, and Judgment given against him at the suit of one Hopper, who had sued a Fieri fac. against Ayer, by vertue whereof the Sheriff seised the Made, and paid parcel of money recovered, but retorned not the Writ; and then the Sheriff was removed and another Sheriff chosen; and after the Writ of discharge directed and delivered to the old Sheriff, he sold the Made to Aden the defendant, who justified thereby in an Action of Trover and Conversion; and whether this sale by the old Sheriff after he was removed should alter the property, was the question: and it was adjudged, that the old Sheriff might sell the Made although he were out of his Office, for that he was chargeable to the party Plaintiff. And they grounded the judgment much upon the book of 32 H. 6. 36. t. Proces 99 where Dixons Case in Lath. 117. they said that the Writ de Dist. imper vic. gave him no authority, but was only to compel him to do that which he had power by the Law to do, and thereupon judgment was given that Ayer the Plaintiff should be barred.

So then the old Sheriff after he is discharged, may notwithstanding sell any goods formerly extended by him whilst he was in his Office.

5. The Sheriff is to read his Patents and to name his Officers.

The new High-sheriff at the first County Court which shall happen to be after his Election and the discharge of the old Sheriff, must read (or cause to be read) his Patent and his Writ of assistance, and must also nominate his Under-sheriff (or County Clerk) and depute, appoint, and proclaim four Deputies (at the least) in that Country to make replevins, for the ease of the Country; which Deputies ought to dwell not past twelve miles distant one from another, in every quarter of the County one, to grant Replevins in the Sheriffs name, and to make deliverance of distresses when need shall require: *5. He must read his Patents. And name his Officers.*

require: and this appointing of Deputies is by force of the Stat. 1 & 2 Phil. & Mary c. 12. And these Deputies shall in the Sheriffs name make Replevins, as the Sheriff himself may do. 1 & 2 P. & M.

And the Sheriff for every moneth that he shall lack such Deputies shall forfeit five pounds, &c. And yet such Deputies, the Sheriff may appoint at any time within two moneths next after he hath received his Patent.

But rather then the High-sheriffs (being Gentlemen of worth) should hazard their oaths, or credit in their Country, they had better (in regard thereof, and for their better discharge of their duties both to God, and to their Prince in the execution of their Office) to keep their Office, and their Under-sheriff in their houses, so as they may take a continual survey themselves, as well of their Office, as of their Under-sheriff, and other Officers, rather than to trust their Officers, especially their Under-sheriff being a stranger, with the whole execution of their Office, and upon bond and covenants, which by the Statute of 23 Hen. 6. c. 10. are thought by many opinions to be void, or voidable at least, (but see more concerning such bonds, &c. hic postea, cap. 96, 97.) And if those bonds prove not good, then a lewd, or an ignorant Under-sheriff may hazard the undoing of his High-Sheriff.

Good advice to keep his Office in his house.

And therefore if the High-sheriff will sleep quietly, and take his repose in safety (whether he shall keep his Office and his Under-sheriff in his house, or no) he shall do well and wisely to look for, and to take good security from his Under-sheriff, before he do trust him with his Office; which security is commonly by bonds and covenants taken by the High-sheriff, of the Under-sheriff and his friends; the form of such bonds and covenants, see hic postea, cap. 96. 97.

6. The Sheriff ought to have a Deputy or Atturney in every of the Courts at *Westminster*, &c.

6. He must have Deputies at Westminster.

Also the Sheriff before he shall return any Writ into the Chancery, the Kings Bench, the Court of Common Pleas, or the Exchequer, ought to make and have an Attorney, or Deputy of Record, in every one of those Courts of Record, there to receive all manner of Writs and Warrants to be delivered to them, viz. all such Writs and Warrants as shall be directed to the Sheriff for whom such Deputy is appointed; and if any Sheriff shall do to the contrary, he shall forfeit forty pound (to the King and Informer) for every such default, and treble damages to the party grieved or endamaged: and this making of Deputies is by force of the Stat. of 23 H. 6. c. 10. 23 H. 6. c. 10.

And it seemeth such Deputies must be made by Warrant of Atturney from the High-sheriff: And yet the Sheriff may make his Deputy without writing, by the opinion of Brudnell 21 H. 7. fol. 37. a.

But

But Sir Edward Coke lib. 9. fol. 51. sheweth, that it was resolved by the Judges, that he which maketh a Deputy, must make him by writing.

And these Deputies must give their attendance in convenient and due manner, in, and upon all and every of the said Courts.

P. Exigt. 7. Also every Sheriff of every of the twelve Counties of Wales, and of the Counties Palatine of Lancaster, Chester, and the City of Chester, shall have in every of the Courts of the Kings Bench, and Common Pleas, one sufficient Deputy at the least, to receive all Writs directed to such Sheriff, for whom the same Deputy or Deputies shall be appointed, in like manner and form, and upon like pains as by the Laws and Statutes of this Realm other Sheriffs of other Shires within this Realm of England be bound to have in either of the same Courts: And all Writs of Proclamation shall be delivered unto every Deputy of Record in the same in Courts: And also like fees shall be paid for making every such Writ of Proclamation, and for the inrolling of the Record, as is limited in the Statutes of 6 H. 8. 1 E. 6. 10. 5 E. 6. 26. 23 H. 6. 10. *Wales and Counties Palatine.*

Les vic. de Chester & Lancaster, & Counties Palatine, doent. mitt sans lour warrant. de atturny in le Court del Common Bank, & doent estre attendant. la. Et ceo Court direct Proces al' Chamberlain de Chester immediatement & il doit escrier al' vic. Et si le vic. la levy argent en execution & ne retorne ascun chose al' Camberlain, per que Chamberlain retorne a ceo Court Mandavi vic. qui mihi nullum dedit responsum, *sur suggestion fait in ceo Court que le vic. ad levy le argent, ils ambideux videlicet le Chamberlain, & le vic. sur un jour done destre in Banco appear, la de estre examin sur ceo. per Nelson Preignatory, Anno 29 Eliz.*

CAP. 3.

For that in former times the Sheriffs in divers of Counties of England, having their Offices, some for term of years of the Kings grant, and others trusting of longer continuance in their said Offices, were greatly encouraged, and did take upon them to do many and divers oppressions to the Kings people, and evil service to the King: Therefore it was ordained and established by divers Acts of Parliament as followeth.

14 E. 3. c. 7. 28 E. 3. 7. * 42 E. 3. 9. 23 H. 6. 8. * Pardon to such offendors granted 28 Hen. 6. c. 3. & 8 E. 4. c. 4. by Act of Parliament.

First, That no Sheriff, * Under-sheriff, nor Sheriffs Clerk, shall tarry or abide in his Office (or shall occupy the said Office) above one year, upon pain to forfeit two hundred pounds yearly as long as he occupieth the Office: And every * pardon made for such offence or forfeiture shall be void, and all Letters Patents made to occupy such office above one year shall be void, any words or clause of non obstante put into such Patent notwithstanding. And whosoever shall presume to take upon him to occupy the office of a Sheriff above one year, by force of such Letters Patents, shall be disabled for ever after to be Sheriff within any County of England: And every man which will, may sue for the said sum of two hundred pounds so forfeited against such Sheriff, Under-sheriff, or Sheriffs Clerk, in any *Not above one year.*

action

action of debt in his own name, and the King shall have the moiety of all that which is recovered, and he that sueth shall have the other moiety, 23 H. 6. c. 8. & 6 H. 8. c. 18.

And yet the King by his Prerogative may dispense with these Statutes, and may grant the office of a Sheriff for years, life, or in fee; see 2 H. 7. f. 6. Br. patents, 109. Co. 7. 14. & Co. 9. 97. Br. prerog. 37. & Fitz. Grt. 33. & Plo. 502. b. & Sir Fr. Bacon, page 75. saith, That it is an inseparable Prerogative of the Crown to dispense with politick Statutes, &c.

Also persons inheritable to the office of Sheriff, and Under-sheriff, and other Officers in London and Bristow, are excepted out of these Statutes. S. c hic polica. 6 H. 6. c. 18.

But for that the High-sheriffs being chosen yearly the morrow after All Souls, divers of them sometimes have not their Patents, nor take their Oath a long time after; Therefore it was enacted by other Statutes (made in the time of Edw. 4.) that every old Sheriff of every County shall have full power, and may occupy his office (sc. may execute and return any Writ, Precept, or Warrant, from or out of any the Kings Courts of Record at Westminster delivered to him) as also to do and execute every other thing to his office of a Sheriff appertaining, during the Terms of Saint Michael, and Hillary, (after the year that their office is ended) unless before the same time he be lawfully discharged, sc. unless he hath a Writ of discharge delivered him of his office Sheriffwick: And they shall not be thereof damnified by force of the aforesaid Statute of 23 H. 6. c. 8. 12 E. 4. c. 1. 17 E. 4. c. 6. Cromp. 208. b.

Not within three years. Also it is Ordained, That no man which hath been Sheriff (or Under-sheriff) of any County by one whole year, shall be chosen Sheriff (or Under-sheriff) of that County again within three years next ensuing, (except there been none other sufficient of possessions and goods to answer the King and his people within the said County,) upon pain of forfeiture of two hundred pounds by him that shall occupy his office contrary to the effect and intent of any of the Statutes afore recited. 1 R. 2. c. 11. 23 H. 6. c. 8.

But the Sheriffs and Under-sheriffs within the City of London, and of such Counties in which they be inheritable to the office of Sheriff, are excepted out of these former Statutes. 23 H. 6. c. 8.

Must be resident. Every Sheriff shall dwell and continue in his own person within his Bailywick or County, for and during the time he shall be Sheriff, (except he be otherwise licensed by the King) and this the Sheriff is bound to do as well by his Oath, as by the statute of 4 H. 4. c. 5.

And yet if the Sheriff being out of his County shall make a pannel, or make any return, &c. it is good. See 9 H. 4. f. 1.

But if the Sheriff be beyond the Sea (scz. at Calice, or elsewhere) and maketh a pannel, or any return there, and sends it into England, that is not good, for that he is no Officer but only in England. 9 H. 4. f. Br. Officer 7.

Note,

Plo. 37. Rolls 2. part 163. Note, That a Sheriff of one County hath no Authority or power within another County, neither may any other Authority or Officer within this Realm, exceed their limits and bounds: And yet if the Sheriff by force of the Kings Writ, shall be commanded to carry his prisoner out of his County, &c. And thereupon shall carry or send by Baston, his prisoner to the place appointed him, although he shall convey him through divers other Counties, yet the prisoner shall be said to be in the custody of the first Sheriff, in every of those Counties, and so to such a special intent, the Sheriff shall have Authority in another County.

Ibid. So if a prisoner of his own wrong shall make an escape, and fly into another County, the Sheriff or his Officers upon fresh suit may take him again in another County, &c. See hic postea.

No Sheriff shall assign, grant, or let to Farm his Office in any manner, nor his County, nor any of his Bayliffwicks, Hundreds, nor * Wapentakes: (nor any of his Courts, as it seemeth) nor any part thereof. And this the Sheriff is restrained to do as well by his Oath, as by Statute, upon pain to forfeit forty pounds: See the Statutes 9 Ed. 2. Lincoln, *de Vicecomit.* 2 E. 3. ca. 12. 4 E. 3. ca. 15. 14 E. 3. c. 9. 4 H. 4. c. 5. & 23 H. 6. c. 10. & 6 E. 6. cap. 16. And the Justices of Assize may enquire thereof, and punish the same. 4 E. 3. c. 15. Abr. d'Ass. 136. Or they may be punished in the Star-Chamber. And yet the Sheriff may make and appoint under him his Under-sheriff, and his Bayliffs, and Deputies, for all these do use their place in the right of the Sheriff, and as the Sheriffs servants: See hic cap. 1. But a Lessee or Farmer occupieth the place, or things demised in his own right. See Fineux 20 H. 7. fol. 12. b. & Dr. & Stud. 136. And therefore the form of the Indenture made at this day, or heretofore made between the High-sheriff and his Under-sheriff, are not warrantable by these statutes: for by the former Book, if the Sheriff letteth his County to his Undersheriff, or covenants with him that he shall have the profits of the County, or part thereof, for a certain time, though there be no Rent received, &c. Yet this is against the statute: for the intent of the statute is, that Sheriffs shall keep their Counties (i.e. the profits thereof) in their own hands, and every part thereof. Fineux 20 H. 7. 13.

M. 7 rot. 'it E. Offic.

* Hundreds and Wapentakes be all one. Camb. 159.

Noton versus *Syms*, Hob. 12. 13, 14.

Br. Grants 39.

By the Book 21 Hen. 7. fol. 36. The County is but the profits of the County, and the Issues coming thereby, so that for the Sheriff to let the profits of his County, or any of his Bayliffwicks, or any part thereof, is forbidden by the former statutes: see B. Grants 59. & 20 H. 7. fol. 12. a. 21 H. 7. 37. & Plo. 87. a. & 124.

20 H. 7. 12. 13. a.

20 H. 7. 12 a. Croke 173. Now the Revenues or issues and profits of the County pertaining to the Office of a Sheriff, seem to be Fees, Annuities, Rents, Farms, Issues, Fines, Amerciaments, Escheats, Estrays, &c. the Goods of Felons, and Fugitives, and other like Casual profits. But quære whether the Sheriff be but to gather up these, and is to be accountable for these profits to the King, or that he Farmeth these of the King under the name of Vicontiels, and payeth Rent for them, 20 H. 7. 12. See hic c. 9.

Note,

Note, Where the King maketh a Sheriff, sine Compoto, there the Sheriff shall have the Revenues which belong to his Office to gather to his own use, Co. 11. 82. Otherwise he shall be accomptable for them: But it seemeth he is not accomptable for them, saving in a gross sum for the Farm of the profits of the County, Keilw. 173. And yet see the form of the Sheriffs Oath for passing of his Account (hic cap. 125.) by which they seem to be accomptable for divers of these things particularly. *Bowles and Berries Case, Rolls 1. part. 183.*

Now whether a Lease made by the Sheriff of his Office or County, &c. only by parol, be contrary to these Statutes or no, see the Book 20 Hen. 7. fol. 12. & 21 H. 7. fol. 36. pro & contra. But however, such a Lease or agreement by parol, seemeth neither safe for the Sheriff, nor warrantable by his Oath.

Also for that this Statute of 23 H. 6. is penal, and every penal Statute shall be taken strictly, therefore by some opinions, where the Sheriff shall let parcel of his County, or parcel of the profits thereof, and shall reserve part of the profits to himself, there he is not within the danger of the Statute, except he let the whole: but others hold the contrary, for that otherwise he might let parcel to one, and parcel to another, and so the Statute should be of little or no effect.

Penal Statutes. And accordingly it is observed by the Right Honourable, and late Reverend Judge Sir Edward Coke, in his eleventh Book, fol. 34. That it is frequent in our Law Books, that penal Statutes have been taken by intendment, to the end that they should not be illusory, but should take effect according to the express intention of the makers of the act, for the advancement of Justice, and in suppression of crimes and hainous offences.

CAP. 4.

The Authority and Power of the High-Sheriff.

Vicecomes est Regis Officialis qui ad Comitatus gubernationem quotannis constituitur. Et partim Judex est, ad causas scilicet minores quæ ejus jurisdictioni subsunt: partim Minister & Mandatarius Regis. Cow. See plus hic cap. 1.

The authority and power of the Sheriff is in some Cases Absolute or Judicial, and in some other Cases Ministerial.

And first concerning their Absolute power.

Absolute or Judicial. No Sheriff shall hold Pleas of any thing pertaining to the Kings Crown (by the Statute of Magna Charta, 17.) sc. they shall not hold Plea of any Felony, or Trespas, vi & armis; nor of any Free-hold, or Land; nor any Plea of any thing touching the Crown, nor of any thing which is against the Peace of our Soveraign Lord the King, his Crown or Dignity: which notwithstanding must be understood to this purpose, sc. That *Magna Charta.*

Sheriffs

Magna Charta, ca. 17. Sheriffs cannot hear and determine the Pleas of the Crown, &c. or plea of Land or Trespass, Vi & armis: But in his Torne, he may enquire of divers things touching the Crown, and of matters against the Peace, &c. See hic cap. 107. 108, & 109.

For by the same Statute cap. 35. the Sheriffs of every County may hold their Torne (or Court Leet) in which Court, the Sheriff hath a Judicial power, and therein they may enquire of Treasons, Homicides, and other Felonies, and common Trespasses, whereof see hic postea tit. Sheriffs Torne, & Stat. 52 H. 3. cap. 24. But they shall take no Indictments (by Commission procured at their own Suit) but only in their Tornes, Stat. 28 Ed. 3. cap. 9.

Appeals of Robbery, or other Felonies, and of Mayhem, and Rape, may by Bill, be sued in the County Court, at this day, as it seemeth. See hic cap. 11.

By the ancient Common Law (before the making of the Statute of Magna Charta) the Sheriff, and Coroners were Judges, and in their Torne, Sheriffs, and in the County Court, the Sheriff and Coroners together, did hold Plea of Felonies, and other things pertaining to the Crown. See Abr. d'Ass. fol.68. Finch. 115. 125. & Stamf. 55. 64. plus hic, cap. 111.

The Sheriff also at this day, may hold Plea of Lands in his County Court by a Justicies, but otherwise he cannot. See hic tit. County Court.

The Sheriff by Plaint also may hold Plea without any Writ in his County Court, de averiis, Captis & Detentis, &c. Which Plea properly belongeth to the Crown. See hic postea, cap. 3. & 114.

See more hic tit. Sheriffs Torn, how Sheriffs may there Imprison, Fine, Bind over, and otherwise punish Offendors. And this Office of a Sheriff one calleth it Judiciaria Dignitas, Co. L. 168.

Also the Sheriff in his County Court may take a Recognizance between party and party, &c. See hic tit. County Courts.

And by the ancient Laws of this Realm, the Sheriff might let to Mainprise by Recognizance, such as were in prison for the Peace.

By an old Statute, he which hath a Pardon for any manner of Felony, must within three moneths, next after the making of the same pardon, come before the Sheriff and the Coroners of the County where the Felony was done, and shall find six good and sufficient Mainpernors (or Sureties) for whom the said Sheriff and Coroners will answer, that he from thenceforth shall bear himself well and lawfully (or be of good behaviour.) And the Mainprises shall be Sealed and Retorned (by the Sheriff and Coroners) into the Chancery within three Weeks after the end of the said three moneths; otherwise such pardon shall be void, Stat. 10 E. 3. cap. 3. vide 3 H. 7. fol. 7. a. Br. Cor. 134. *Quære del use a ceo jour.*

To keep the Peace. Again every Sheriff is by the Common Laws a principal and special Conservator of the Peace in every place within his County, and hath committed unto him the custody of his County for the time that he is Sheriff, and is to see the Peace thereof kept and maintained; And upon request to him made, he may command and cause another to find sureties for the peace, and may take the same surety by Recognisance (to the use of the King) and that ex officio, Fitz. 81. d. Yea all obligations that he takes for the preserving of peace, or to that end, are as Recognisances in Law, *Termes del Ley*, tit. Vic. Kitch. Retorne 44. Co. L. 168.

Again the authority of the Sheriff is by commission of Record, by which the King commits to him Custodiam Comitatus (and so the keeping of the peace, and Administration of Justice is committed to him, as is here before shewed, &c.) And all Commissioners who have authority to keep the Peace, or to sit or deal in matters of Justice for the Common-wealth, may take Recognisances. Vide Br. Recog. 5. & 18.

Upon a special supplicavit directed to the Sheriff, he may take a Recognisance by the opinion of Danby, 9 E. 4. 31. and Mr. Broke abridging the Case, giving this reason thereof, for that the supplicavit is a Commission to the Sheriff, and Commissioners may take Recognisances. Br. Recog. 5.

Such persons as shall be apprehended upon suspicion of felony, either by the Country upon fresh suit, or hue and cry, or by watchmen, shall be delivered to the Sheriff, who may commit them to the Gaol, &c. hic cap. 2.

Yea the Sheriff may apprehend, arrest, and commit to prison all Affrayors, and all such as within his jurisdiction (sc. within his County) and in his presence, shall in any sort break, or attempt to break the Kings Peace: and may command the aid and force of others, to arrest such Offendors, and may cause them to find sureties for the Peace.

Also if one shall threaten me of life, or member, and that I shall complain to the Sheriff thereof, the Sheriff may cause him to find sureties for the peace, and may set him in the stocks, quousque he shall find sureties, &c. 44 E. 3. F. Barr. 202. 12 H. 7. 17.

So if the Sheriff shall see one assault another, &c.

So if any man shall make an assault upon the Sheriff himself. See 5 H. 7. 6.

Also when any of the Kings enemies shall come into the land, the Sheriff in defence of the Realm, may command all the people of his County to attend him; and he and they are to attend the King to defend the land.

And when any Rebellion, Insurrection, or riotous assembly of people shall be within land, the Sheriff may raise the power of his County to apprehend such Malefactors. See hic postea.

But

1 M. ca. 8. Rolls 1. part. 237. But yet a Sheriff ought not (in other things) to execute the Office of a Justice of Peace in the same County where he is Sheriff during the time that he is Sheriff: and all and every acts to be done by any Sheriff by authority of any Commission of the Peace during the time of his Sheriffwick shall be void and of none effect; but if he be put into the Commission of the Peace before he be Sheriff, and then he is chosen Sheriff, and that Commission of the Peace con-

Can b. 257. tinueth after that he is discharged of his office of a Sheriff, Quære if he may not then sit or execute the office of a Justice of Peace by force of that commission, without taking a new oath? It seemeth he

1 Ed. 6. may; for first by the Statute of 1 Ed. 6. 7. it was ordained and enacted in these words following, sc. That albeit any person or persons being Justice of Peace, &c. shall fortune to be made Sheriff, that yet notwithstanding he and they should remain Justice and Commissioner, and have full power and authority to execute the same in like manner and form as he or they might and ought to have done before the same Statute.

After the making of which Act, divers persons being in the commission of the Peace were also made Sheriffs of the same County, and did exercise either of the said offices, which seemed not to be convenient,

1 Mariæ. and therefore it was after enacted by the Statute made 1 Ma. cap. 8. That no manner of person having, using, or exercising the office of the Sheriff of any County, shall use or exercise the office of the Justice of Peace by force of any commission, or otherwise, in any County where he or they shall be Sheriff during the time only that he or they shall use or exercise the said office of Sheriffwick, any thing in the said former Act (made 1 Ed. 6.) notwithstanding.

So now the making of a Justice of Peace to be Sheriff of the same County doth not determine the Commission of the Peace, for then the authority of all other the Justices of the Peace of the same County should be thereby determined, but this seemeth only to disable the person being Sheriff to meddle as a Justice of Peace during such time only that he shall be Sheriff of the same County; and that the commission of the Peace need neither to be renewed, nor the late Sheriff newly sworn for the execution of the Office of a Justice of Peace, but he may again as before execute that Office by vertue of the former commission of the Peace.

Rolls 1. part. 237. But every Sheriff (by the common Laws of this Realm) may do, and is bound to do his best endeavour for the conservation of the Kings Peace, and may and ought to pursue, apprehend, arrest, and imprison all Traitors, Murderers, Robbers, and other Felons, and all such others as do break, or go about to break or disturbe the Kings Peace within his County (as is before shewed) and to that purpose the Sheriff may take (of that County where he is Sheriff) any number that he shall think meet to aid and assist him: and every man being required ought to be aiding therein to him, and if any men (being required) shall refuse to aid the Sheriff therein, they shall be fined to the King: Er. fines 37. *Arrest Fel. &c.*

3 E. 1. c. 9. And by the Statute of 3 Ed. 1. cap. 9. upon any felony committed, all men generally shall be ready at the commandment of the Sheriff (and at the cry of the County) to pursue and arrest all Felons (when any need is) as well within Franchises, as without; and they which make default and thereof be attainted shall make a grievous fine to the

King: and it seemeth the Sheriff may attache all such persons making such default, to appear before the Justices of Gaol-delivery, there to answer their said default: Officium Coronat' 3 Ed. 1.

And yet a man cannot justifie to arrest another for Felony, by the commandment of the Sheriff, for in such case every man hath equal power with the Sheriff, and so his commandment is not material: And it is not like where the Sheriff hath the Kings Writ or Proces to execute, for there upon the Sheriffs Precept in writing, (and in some cases, upon his command by word only) a man may justifie, &c. 5 H. 7. 4, 5.

Also the Sheriff may and ought to arrest (or attach) and take into his custody such Felons so apprehended or taken, and ought to imprison them in the Gaol till the coming of the Judges or Justices of Gaol delivery. 3 E. 1. c. 9. & 4 E. 1. Officium Coronat'.

If a Felon taken upon hue and cry shall be delivered to the Sheriff, he is to inroll the same: and upon a presentment thereof before the Justices, if it shall be found that the Felon is out of the custody of the Sheriff, contrary to Law, it shall be adjudged an escape in the Sheriff. 3 E. 3. Fitz. Coro. 345. See hic c. 2.

But if the Sheriff (of his own authority) shall arrest any man upon suspition of Felony, first there must be some felony committed in deed and next the Sheriff himself must have a suspition of him, and for the same felony. Liber Intrac. tit. fx. imprif. div. 5 & 5 Hen 7. fol. 4. for the Sheriffs authority therein, is but such as every man hath, ut supra.

See more in my Country Justice, tit. Forcible Entry & tit. Arrest.

Suspected persons. Also Sheriffs (ex officio) may arrest within their County all persons by them suspected which be vagrant, or which shall walk by night or day, and which are of evil name or fame, and they shall commit such offendors to the Gaol, there to remain until the coming down of the Justices assigned to deliver the Gaol: 5 E. 3. cap. 14. Cromp. 203.

Quære, If the Sheriff may not put such suspected persons under common mainprise, binding them with two sufficient sureties by recognisance to appear before the Justices at their next Sessions or Gaol-delivery, and to certifie the same recognisance before the said Justices accordingly, every Sheriff in Wales may do this by the Statute 34 H. 8. c. 26. & 27 H. 8. c. 26.

Also if any other person shall have any suspition of such Night-walkers, or other persons of evil fame, they may arrest them, or cause the Constable to arrest them, who shall deliver them to the Sheriff, and the Sheriff ought to receive them, and shall enquire of such offendors, and shall return their Enquests before the said Justices of Gaol-delivery, with that which they have found, and the cause of their said arrests, together with their bodies: and in case that the said Sheriff hath not enquired of such arrests, they shall be amerced: See Hic antea cap. 2. 5 E. 3. c. 14.

Also

2 E. 3. c. 3. Northampton, Crom. 203. Also every Sheriff (within his County) may and ought to arrest all such persons as go or ride armed offensively, either in the presence of the Sheriff, or in Fairs or Markets, or elsewhere, in affray of the Kings people, and may commit them to prison, there to remain at the Kings pleasure (i. until the Kings Majesty hath signified his pleasure of them: Or that the Kings Justices, before whom such Offendors shall be convict, shall deliver them:) and also the Sheriff may seize and take away their armour to the Kings use, and prize the same by the oaths of some present. See my Country Justice, tit. Armour & Bailment. *Persons in Armour.*

And yet they themselves (i. the Sheriff and his Officers) may lawfully bear armour and weapons: See tit. posse comitatus.

The Sheriffs in Wales may put every misruled and suspect person within their Sheriffwick, under common Mainprise and Surety of their personal appearance, and that by Recognizance with two sufficient Sureties, to appear before the Justices within the limits of their Authority, at the next General Sessions to be holden next after the taking of such bonds, and shall certifie the names of them that be bound before the Justices at the said Sessions without concealment thereof. See the Stat. of 27. H. 8. c. 26. & 34 H. 8. c. 26.

Sheriffs may and ought to take from servants (to husbandry, and from servants to any Artificer, or Victualler) as also from Labourers, their swords daggers, and other weapons, if they shall find them bearing any; except it be in time of War for the defence of the Realm, or when they be travelling with their Master, or in their Masters message: and the Sheriff may and ought to arrest such Offendors, and it seemeth he may commit them to prison, there to remain until the next sitting, or Sessions of the Peace, or Gaol-delivery: See before the Stat. 2 E. 3. cap. 3.

Also the Sheriff shall keep their said Weapons until the next sitting or Sessions of the Justices, and shall then and there present the said Weapons, together with the names of those persons which did so bear the same Weapons. But this Stat. of 12 R. 2. c. 6. seems to be wholly now repealed by 21 Jac. cap. 28.

23 H. 6. c. 14. If any Noble mans, or other Subjects Cator shall (by way of purveyance) take any mans goods, or any carriage, against the Owners will, upon notice thereof, and request made to the Sheriff (or other Officer) they shall presently arrest all such Cators and Buyers so offending, and shall send them to the Kings next prison, there to remain without Bail, until they have redelivered the said goods, carriages, and things so taken, or the very value of the same: And if the said Sheriff (or other Officer) shall do the contrary (i. shall not assist the party oppressed in such case) they shall forfeit twenty pounds, the one half to the King, and the other half to the party from whom such things be so taken (if he will sue for the same, and if he will not sue, any other may sue for the King and himself, &c.) And besides if any such Cators or Buyers be duely convict of such unlawful taking, they shall yield to the party grieved, the treble value of the things so taken, and double Costs of Suit, and withall shall make Fine and Ransom to the King. *Purveyor del subject.*

By

Riotors. By the Statute made 17 R. 2. cap. 8. Sheriffs (and all other the Kings Officers) when they have notice of any unlawful Assembly or Riot, or other offence against the Peace, they ought to raise the power of the County (if need be) and with all their power to apprehend such Malefactors, and to commit them to prison, there to remain until due execution of the Law be done upon them: And all Lords (of Seignories) and all other the Kings Liege people, ought to be attendant to the Sheriff, and other Officers with all their power and force herein. 17 R. 2. c. 8.

And by a later Statute made 13 Hen. 4. If any Riot or unlawful Assembly shall be made in any part of the Realm, the Justices of Peace (or two of them at the least) and the Sheriff, or Under-Sheriff (of the County where such Riot or Assembly shall be made) shall come with the power of the County (if need be) and shall Arrest all such Offendors, as they shall find there present (and all such as come in the Company with such Riotors,) And shall take away their Weapons and Armour, and shall cause the same to be prized, and to be answered to the King as forfeited. See the Stat. of Northampton, made Anno 2 E. 3. cap. 3. 13 H. 4. 7. *Arrest.* 2 E. 3. c. 3.

And in the execution of this Arrest of Riotors, the Sheriff, &c. may justifie the beating, wounding, or killing of any of the Riotors, if they shall resist, or will not yield themselves.

After the Arrest made of such Riotors, the said Justices and Sheriff or Under-sheriff shall make a Record in writing of the said Riot, &c. of all that which they shall find or see done in their presence against the said Law (without any enquiry thereof by a Jury) and such a Record shall be a sufficient conviction of the Offendors. 13 H. 4. c. 7. *Record.*

After such Record made of the Riot, the said Justices and Sheriff or Under-sheriff shall presently commit the Offendors to prison: And also may Assess their Fines (or else they may leave that to the Assizes or Sessions, &c.) And the power of the County ought to be aiding to the Sheriff or Under-sheriff for the conveying of the Offendors to the Gaol. Crom. 61. b. *Imprisor.*

And if this Statute of 13 Hen. 4. be not executed fully in all and every part thereof by the Justices of Peace, and by the Sheriff or Under-sheriff, &c. If they shall not arrest all such offendors as they shall find there present: Or if they shall not make a Record in writing of all that which they shall see done in their presence against the Law; Or if they shall not commit the Offendors to the Gaol (presently:) Then as well the two next Justices of Peace, as also the Sheriff or Under-sheriff shall forfeit each of them one hundred pounds, Cromp. 61. b.

Inquiry. If the Riotors be gone before the coming of the Justices and Sheriff, then the same Justices, or two of them, ought diligently to enquire thereof (by a Jury to be returned by the Sheriff) within one month after such Riot or unlawful Assembly made; and if the truth cannot be found out, then within one month next ensuing after the enquiry, the same Justices (or two of them) and the Sheriff or Under-sheriff shall certifie the King and his Council thereof, which Certificate 13 H. 4.

Lamb. 319. tificate shall be made into the Star-Chamber, or to the body and board *Certificate*
Cromp. 93. of the Privy-Council, or into the Kings Bench of the whole Fact, and all the circumstances thereof, with the certainty of the names of the principal Offendors) which Certificate shall be of the force of an Inditement of twelve men against the Offendors: See 13 H. 4. cap. 7.

13 H. 4. c. 7. And for default of the Justices of Peace, and Sheriff or Under-sheriff, in not making such Certificate, as well the two next Justices
Dyer 210. of Peace, as also the Sheriff or Under-sheriff shall forfeit each of them one hundred pounds to the King.

2 H. 5. c. 8. And if the said Riot or unlawful Assembly be not found by reason of any imbracery or maintenances of the Jury, then the said Justices of Peace, and the Sheriff or Under-sheriff (over and besides such Certificate which they must make, according to the aforesaid Statute of 13 H. 4.) shall in the same Certificate also certifie the names of such maintainors and imbracers, with their misdemeanors that they know, upon pain of every of the said Justices and Sheriff or Undersheriff to forfeit twenty pounds, if they have not reasonable excuse for their not certifying of the same.

Lamb. 320. If after the enquiry, and before the Certificate made, the Sheriff happen to die, or one of the Justices be put out of the Commission then no Certificate can be made by the opinion of Master Marrow.

But Quære thereof in regard of the penalties inflicted by the Statute aforesaid. See more in my Country Justice, titulo Riots.

3 E. 1. c. 32. No Sheriff shall suffer any Barrettors, or Maintainors of Quar- *Barrettors.*
Poulton. rels in their Shires: This Statute seemeth to be here falsly translated, sc. the last word (Shires) for County Courts, for the old French Statute Book, is in these words, *Purveu est que nul Viscounte ne suffre Barretors maintener parols en Countes*: And the title over the Statute is thus, *Queux devient fere les Judgements en Countes ou Court de Baron*: And therefore this Statute seemeth to be only a prohibition to the Sheriff not to suffer any Barrettors to maintain any Actions, Suits or Quarrels in their County Courts:
Co. 8. 36. sc. that Sheriffs in their County Courts shall not suffer any person by fraud or malice to maintain multiplicity of unjust and feigned suits there, nor to stir up others thereunto. See hic postea titulo County Courts.

13 E. 1. c. 39. If the Sheriffs Bayliff shall retorne a disturbance of the execution *Disturbers of*
of the Kings Process, the Sheriff shall forthwith go in person *the Sheriff.*
(taking with him the power of the Shire) to do execution, and if he finds his Bayliffs false he shall imprison them; and if he finds them true, he shall punish the resistors by imprisonment, from whence they shall not be delivered without the Kings special Commandment: And if the Sheriff do find such resistance when he cometh (but can-
Vide [illegible] not attach them) he shall certifie to the Court the names of the
21. [illegible] resistors, their Aiders, Consenters, Commanders, and Favourers,
cap. 42. and they shall be Attached by a Writ out of the Court to appear there, &c. But the Sheriff shall not punish (otherwise than by Imprisonment) such Resisters, as he findeth himself: For the Of-
fendors

fendors may Traverse the Sheriffs Certificate or Retorn: And besides, the words of the Statute are further thus, Neither shall any Officer of the Kings meddle in Assigning the punishment, for our Lord the King hath specially reserved it to himself, because that Resisters been reputed disturbers of his Peace, and of this Realm. But yet the Sheriff may Arrest and Imprison such Offendors or Resisters (as he shall find himself) as breakers of the Kings Peace, and so to have their bodies forth coming and ready to appear in the Kings Court at the coming of the Justices; Again, the words of the Statute are further, that if the Sheriff shall return (into the Court) that he could not execute the Kings Process for resistance, he shall be amerced, for he should have taken the power of the County to have aided him therein, and that such returns of the Sheriff redounds much to the dishonour of the King.

Amerced. *Posse Comitatus* Rolls 2. part. 57. 58.

Mr. Bracton, lib. 3. cap. 37. saith, Officium vic. est, si quis Conqueratur de injusta Captione averiorum, &c. *(soit ceo per brief ou Plaint)* accedat vic. ad locum, &c. Et petat visum de averiis, &c. Et si sit aliquis qui velit contradicere, vel propter hoc in eum manus violentas injecerit, Capiat delinquentes, & in Gaolam projiciat, quousq; Dom. Rex inde præceperit voluntatem suam, &c.

And note, wheresoever the Sheriff (or any other of the Kings Officers) may take Posse Comitatus, or have authority either to execute the Kings Process, or to apprehend Felons, Riotors, or other breakers of the Kings Peace, if the Sheriff, or other Officers, shall find resistance therein, it seemeth they may Arrest and Imprison all such resisters, and other such offendors, which they shall find there present: See my Country Justice, *titulo* Arrest and Imprisonment.

And wheresoever the Sheriff shall take Posse Comitatus with him, although it be without sufficient Cause, yet his servant, or any other person, may justifie the same by the Sheriffs Commandment, for that such their doing was by Authority. 5 H. 7. 4, 5.

Also wheresoever the party against whom any lawful Process, Writ, or Warrant is granted, shall after he is Arrested, or other execution of such Warrant done, make resistance, or shall make an assault upon the Officer, there the Officer may justifie the beating and hurting of him, and of all other that shall disturb the Officer in the execution of such Process, Writ, or Warrant; and may also imprison him and them (in the Stocks) for the same as it seemeth. See Br. Trespass 218. & 296. For the beating of such as resist, or assault the Officer. 2 E. 4. f. 6. 21 H. 7. 39.

And if the Sheriff, or his Bayliff, or other Officer cometh by vertue of the Kings Process, or other lawful Warrant to Arrest another for Debt, or Trespass, &c. who maketh resistance, and thereupon is slain by such Officer, or by any of his Company, this hath been taken to be no Felony, but justifiable. See Fitz. Coron. 261. Doctor & Student 133. b. Cromp. 24. a. 30. b. Tamen quære what the Law is at this day, in this last Case.

Sheriffs also may bail their prisoners in divers cases. See hic postea tit. Bailment. *Bail prison.rs.*

13 R. 2. c. 8. Sheriffs have the keeping and the cognisance and correction of the assises of Bread and Ale, and also of false weights and measures, (which things do appertain to the Crown, Bract. li. 3. c. 35.) And they may in their Torne inquire of the assise thereof broken, &c. But if they upon inquiry shall find any to be defective, they shall take no amerciament or fine for any default touching the assise (of Bread and Ale) for the which such an offendor ought to have bodily punishment by the Law; but (by the Statute made Anno 13 R. 2. c. 8.) they shall adjudge them to that bodily punishment which the offence requireth, and shall do due execution thereof. Vide hic cap. 109. *Assise of bread, &c.*

Stat. 51 H. 3. And by the old Statutes and customs used in this behalf, the Baker and Brewer for their first offence in breaking their assise, shall be amerced; for the second offence likewise amerced, (according to the offence;) for the third offence they shall be more grievously amerced and warned; but if they shall offend in breaking of the assise the fourth time (being thereof convicted by order of Law,) then they shall receive corporal punishment upon the pillory, or some other bodily correction, without any redemption either by gold or silver: And if the Baker doth exceed (in breaking the assise of his Bread) the full weight of two shillings six pence (which is one ounce and an half) in his farthing white loaf, then he shall suffer the judgment and punishment of the Pillory without any fine or admonition given to him; vide the Statute of the Pillory and Tumbrel made Anno 15 Hen. 3. and another Statute incerti temporis cap. 2. & 6. Poulton Statutes at large, page 17. 111, & 112.

Sheriffs also in their Torne, sometimes upon their own view of the offence, and sometimes upon presentment thereof, may commit the offendors to Ward or Prison (in some cases) and in other cases may impose a fine upon them, or may amerce them, &c. See more hereof hic postea tit. Torne.

1 E. 4. c. 2. But now by the Statute made Anno 1 Ed. 4. cap. 2. the Sheriff (of himself, without Process, or Estreats, to him delivered from the Justices of Peace) hath no power to levy any Amerciaments upon any presentment, or Inditement, taken before him in his Torne, but all such presentments, and Inditements, are first to be delivered by the Sheriff to the Justices of Peace of the same County, and the offendors to be proceeded against by the said Justices, and then the Justices are to make out process for the attaching of such offendors, and for the levying of such amerciaments, &c. and to deliver estreats to the Sheriff to levy the same thereby. See hic postea titulo Sheriffs Torne.

And now upon presentment in the Sheriffs Torne, of any Inholder or Hostler, for not making their Horse-bread of due Assise, the Sheriff may fine the offendors, and may make out process against them; and they being taken the Sheriff may commit them to prison until they have paid the fine. 32 H. 8. c. 41. & 21 Jac. c. 21.

Note also that in some cases the Sheriff hath two powers, or a double and two-fold Authority, sc. the one as a Judge, and the other as an Officer, in one and the same business; As in a Writ of Redisseisin, in a Writ to enquire of Wast, in a Nativo habendo, and in a Writ of Admeasurement of Pasture, &c. In these Cases the Writ is as a Commission to the Sheriff, and by vertue thereof the Sheriff is Judge of the Cause (as the Justices of Nisi Prius are) Fitz. Attaint. 13. 2 H. 4. 3.

And therefore in in a Writ of Redisseisin, the Sheriff, as a Judge, taketh and holdeth Plea of the matter, and goeth to the Tenements to see them, and to hear the matter, and after he giveth judgment, and committeth the Disseisor to prison: And as an Officer he executeth the Process, &c. 7 H. 7. fol. 4.

So upon a Writ of Admeasurement of Pasture (which is Viscountiel) the Sheriff, as a Judge, holdeth Plea, granteth or maketh out Process, and examineth the matter: Otherwise the Suitors be Judges. Co. 6. 12.

To enquire of wast. And in a Writ to enquire of Waste, as also in a Writ of Redisseisin, &c. the Sheriff being both a Judge, and an Officer of Record, if therefore he shall make a false Retorn therein, the party cannot contradict it; and if the Land lie in a Franchise, the Sheriff cannot make his Warrant to the Bayliff of the Franchise, or Retorn Mandavi Ballivo, &c. For he cannot grant over the Judicial power, but he must enter the Liberty, and execute the Writ himself, otherwise it is Error. 11 H. 4. 7 H. 4. fol. 4. Br. Offic. 4. 9. 34. 37. 42. & Redisl. 6.

Redisseisin. And upon a Writ of Redisseisin directed to the Sheriff, if the Sheriff by Inquisition thereof taken before him, shall find the Disseisee to be disseised again, &c. then the Sheriff shall presently take such Disseisors, and commit them to prison, there to remain at the Kings pleasure, &c. and not to be delivered without special Commandment: For in case of Redisseisin, the Sheriff is made and appointed to be a Judge (by this Statute of Merton) and all his proceedings by force of the said Statute of Record, &c. Co. 6. fol. 12. 20 H. 3. cap. 3.

Nativo habendo Also in a Writ de Nativo habendo, if it goeth to the Sheriff to hold Plea of the Matter, there he is both a Judge and Officer, &c. But where it is directed to the Sheriff Retornable in Banco, there is he but an Officer, and not Judge. See hic postea tit. County Court. Fitz. 78. k. & Fitz. Retor. 52. Br. Offic. 36.

Note that in a Writ to inquire of Wast, as also in a Writ of Redisseisin, &c. directed to the Sheriff, whereby he is made a Judge of the Cause, the Sheriff must sit and execute the same in proper person, and not by his Under-sheriff, or other Deputy, neither ought he to Write, &c. To the Bayliff of a Franchise, although it be within a Franchise, but the Sheriff must enter the Franchise, and must do it himself. And the Process in such Cases shall be served by the Sheriffs Bayliff. Fitz. Retorne 52. 53. 92. So likewise in a Writ of Dower, Noy 21.

Also in Case of Replevin, the Sheriff by the Stat. (of Marl. cap. 21. & Westm. 2. c. 2.) hath been holden to be a Judge of the Cause, and the Statutes to be to him a Commission, as a Justicies, &c.

21 H.

21 H. 6. Fitz. Retor. 17. See more hereof hic postea tit. County Court.

Yea in every Case where a Justicies was directed to the Sheriff, he was holden to be a Judge of the Cause, and not the Suitors, ibid. But the Law is now holden otherwise. See Co. 6. 11, 12.

Mr. Bracton, lib. 3. c. 35. wrote thus, Potest quidem Vicecomes tenere plura placita, quæ non sunt ex Officio Vicecom. sed vice ipsius Regis, Non sicut Vicecomes, sed sicut Justiciarius Regis: Si hoc ei specialiter demandetur quod Juratam Capiat, & Inquisitiones faciat, Extensiones, & Partitiones, licet in quibusdam Judicium reddere non possit: Item habet ex speciali mandato Regis, non ex Officio Vicecomitis, ubi mandatum habet quod Justitiet aliquem, & quo Casu videtur quod omnia habere debeat ut Justitiarius, sine quibus placitum illud terminari non possit. Habet etiam ut Justitiarius, & non ex Officio vicecomitis, quod cognoscere potest de Averiis captis & detentis, contra vadium & plegium, quod quidem placitum pertinet ad Coronam, & quod ei ex Necessitate conceditur ad terminandum, &c. Item pertinet ad ipsum cognoscere de Assisis in Regno Statutis, & juratis per Regnum, si fuerint servata, vel non, sicut panis & Cervisie, & de falsis mensuris, que pertinent ad Coronam, & de quibus Attachiamenta facere potest simul cum Coronatore, usque ad adventum Justitiariorum: Item pertinent ad Vicecomitem visis Franciplegiis in Turnis suis duobus, singulis Annis per Hundreda, Wapentakia faciendis, &c.

Also in chosing Knights for the Parliament, the Sheriff by the Statute (to some purposes) is made a Judge, sc. to examine, and to judge of the ability of such as be chosers of these Knights: See tit. Knights of Parliament.

Thus much concerning the Sheriffs absolute authority, and now it followeth to Treat of his Ministerial duty, &c.

And note that both these his Authorities (or duties) seem to be implied in the Saxon word *Schire Reeve*, id est, *le Reeve del Shire*, which is as much as Præpositus Comitatus, the Ruler or Governor of the County (See Co. 9. 49. & Co. L. 168.) importing his absolute power, Or Ballivus, or Thesaurarius Comitatus, the Kings Baylliff, or Treasurer of the County or Shire, importing his Ministerial Duty, it being part of his Duty to gather up the common monies and profits, &c. of the King within his County. And so the Sheriff is called Ballivus, and the County is called Balliva sua. Co. L. 61. b. 168.

Besides that the County is many times called Balliva, a Baylliwick, as appeareth also by the forms of the Sheriffs Retorns, Non est inventus in Balliva mea, &c.

This Ministerial duty of the Sheriff, Mr. Cambden, pag. 160. setteth down thus. The Sheriff may well be termed the Treasurer of the Shire or Province; For it is his Duty to gather the Common Monies and Profits of the Prince in his County; to collect and bring into the Exchequer all Fines imposed, even by distraining; to be attendant upon the Judges, and to execute their Commandments; to assemble and impannel the twelve men, which in causes do enquire of the Fact, &c. to see condemned Persons executed; and to examine and

determine certain smaller actions. Hæc ille. And therewith for the most part, agreeth that which followeth here.

The word Reeve is a Saxon word, and signifieth as much as a Bayliff: And as a Bayliff of a Mannor is one which hath authority to gather up Rents, Amerciaments, and other Duties, &c. due to his Land, and to do other business belonging to a Mannor, so the Sheriff hath authority to do for the King in his County as aforesaid, sc. to gather up, and accompt for, the common monies, and profits of the County which come to the Exchequer, and to do and execute other common businesses.

The word Bayliff came in with the Normans, and here it signifieth an Officer concerning the administration of Justice of a certain Province. See the Terms of the Law, & Co. L. 168.

CAP. 5.

The Ministerial Authority, Duty, or Office of the Sheriff, consisteth principally in these things following.

Truly to keep the Kings Rights of his Crown, within his County: sc. the Kings Lands, Franchises, Suits, Rents, and all other things that belongeth to the Crown: See his Oath; & hic cap. 19. 6, 7, 8. His Oath.

2. Truly to gather (and bring into the Exchequer) the profits and monies due to the King within his County or Bayliwick: sc. the Kings Rents, Farms, Debts, Issues, Amerciaments, Fines and Forfeitures, hic cap. 9. 10, &c.

3. To seize to the Kings use the goods of Felons attainted, and of Fugitives, and of persons outlawed, Treasure trove, Wayfed goods, &c. Deodands, Estrays, Wreck of the Sea, Whales, Escheats, Wards, and Lands of Ideots, hic cap. 14, &c.

4. Truly to accomplish and put in execution all manner of Writs, Process, Judgments, Executions, Commandments, and Precepts directed to him from any of the Kings Courts, which are to be executed within his County, cap. 20. Duely to return all such Writs, &c. cap. 36. To Impannel Juries, and to Return them, cap. 85. &c.

5. To be attendant upon the Judges in their Circuits, &c. And to execute all their lawful Commandments, &c. hic cap. 98.

6. To assist the Justices of Peace in his County: sc.

in some Cases { To join with them, To attend them, } See hic cap. 99. To execute their Precepts, &c. ibid.

7. To execute the Precepts of Commissioners of Sewers, and other Commissioners, cap. 100.

8. To

8. To execute the Precepts of Eschcators, and Coroners, ibid.

9. To assist the Ordinary, in suppressing Heresies, cap. 101.

10. Truely to keep his Courts: sc.

his { Tourne; in this the Sheriff is a Judge of Record, and so hath a Judicial Power.
County, or Shire Court; which in some Cases also is a Court of Record. See hic cap. 105. &c. }

11. To proclaim certain Statutes, &c. cap. 102.

12. To make Purveyances for the King in some Cases, cap. 103.

Of all these see more fully hereafter in this Book.

CAP. 6.

Lands.

IT is parcel of the Sheriffs Oath, truly to keep the Kings Rights of his Crown, sc. his Lands, &c. Now the Kings lands, be either the ancient *Demesne* lands belonging to the Crown; or else such lands wherein the King hath right, as descended to him from his Ancestors, or of his own seisin, purchase, or getting, or which come to him by escheat or forfeiture. *Lands.*

Fitz. 16. d. Vide Minsh. verbo Domesday book. Mr. Fitz. saith, that the Book which is called *Domesday* (being the survey of England) was made in the time of Saint Edward the Confessor, and all the Mannors and Lands which were in the seisin and hands of the said Saint Edward, at the time of the making of the said Book, are ancient *Demesne*, and were anciently belonging to the Crown.

Ancient *Demesne*, Antiquum Dominicum continet omnes illas terras que ad Regem spectabant tempore Edwardi Confessoris. Vide Dr. *Cowell* 88.

And yet, vide 49 E. 3. 22. Br. Aunc. Demesne 9. (and Mr. Lambard and Mr. Cambden) that the Book called Domesday was made in the time of King William the Conqueror, and that the lands in that Book, which are under the title, Terre Regis Edwardi, or under the title, Terre Regis, only (which is intended William the Conqueror) are ancient *Demesne*; And so that the lands which were in the hands of the Conqueror, are also ancient *Demesne*; And that by that Book only (or chiefly) shall ancient *Demesne* lands be tried.

For the reason of the name of the Book, John Speed in his Chronicle, page 5. saies thus: King William the Conqueror caused a description to be made of all England, how much land every one of his Barons possessed, how many Knights fees, how many plow-lands, how many

many in villenage, how many head of beasts, yea how much ready money every man did possess, and what Rents might be made of every mans possessions: The Book of which Inquisition (yet in the Exchequer) was called Domesday, for the generality of that judgment on all the land.

And so it may seem that Edward the Confessor caused such a Book to be made (in his time) of all such Mannors and Lands which were then in his own hands; And that William the Conqueror made an addition to the former Book, and caused to be entred therein, and added, such Lands as were then in the hands of the Conqueror himself; as also such lands as were in the hands of every of his Barons, and other Subjects.

Now it is to be considered what the Sheriffs Office or Duty is in this particular; or what the Sheriff by vertue of his Oath stands bound to do, if he knoweth of any of the Kings lands within his Bayliwick, to be concealed or withholden, by any Subject having nothing to shew for them.

And yet where any man shall encroach upon the Kings Lands, or upon the Kings High-way, or shall levy or make any house, or building, wall or hedge, &c. upon the Kings land, &c. or shall make any enclosure thereof, these are Purprestures, and to be enquired of, and reformed, by the Sheriff in his Torne, and may be seised into the Kings hands by the Sheriff, &c. See hic cap. 107. see postea.

Where any lands, &c. shall come to the King by Descent, Reversion, Remainder, or Escheat (in which cases, without any Office found, or other matter of Record, there is a possession in Law vested in the King, sc. the Freehold is cast upon him in Law) there it seemeth that the Sheriff ex officio, may seize or take the profits of the same lands to the Kings use (making account for the same) and so may the Escheator. Stamf. de Prerog. folio 54. Co. 4. 58. Vide plus Stamf. & Co. 5. 52. Rolls 1. part. 183.

In ancient times the Sheriffs in their Tornes did enquire of Alienations in mort-maine; and of Alienations (by the Kings tenants) without licence. Lectura Mr. Littleton super Stat. Westm. 2. And in such Cases the Sheriff might have seized the lands to the Kings use, as lands forfeited, or escheated.

But the Escheator is now a more special Officer for finding out the Kings title to lands, and other things. 4 Ed. 4. 24. Fi. 227. Co. l. 13.

CAP. 7.

Franchises.

A Franchise is a Royal priviledge in the hands of a Subject, Finch. 38. And such are every liberty, or commodity, which having their creation at the first, by the special grant of the King, or of their own natures appertaining to the King, are given or granted to a common person, to have thereof some estate of inheritance, or for life, &c. And of these some are more Royal than others, of all which see more fully in Mr. Finch. 38.

But of such as are less Royal (being almost infinite) some few of them, whereof our Law Books do most make mention, and wherewith the Sheriff hath any thing to do, are here shortly treated of: And if any man do hold any of these last Franchises without or contrary to the Kings grant or lawful prescription, it seemeth to be enquirable in the Sheriffs Torne, as a Purpresture, or as an usurpation upon the King. Co. L. 277. See Fitz. forfeiture 26.

Franchises.

For it is parcel of the Sheriffs Oath to keep the Kings Franchises; and therefore the Sheriff may enquire of, and seise for, and to the Kings use divers of those things, as Franchises and Royalties belonging to the King by his Prerogative.

He is to seise to the Kings use:

- The mean profits of Lands for Intrusion, and Alienation without licence.
- The profits of the Lands, &c. of Aliens.
- The profits of such lands as come to the King by { Attaindor, or Escheate. }

(the above) Within their Baylywick or County.

- But in most Cases, for the profits of Lands there must be first an Office found for the King (which properly belongeth to the Escheator) scz. to enquire and find the certainty what Lands they be, and the yearly value thereof, &c. before the Officer may seise them. Vide Co. 8. 169. & 9. 95.
- The profits of the Lands of persons outlawed in personal actions, these the Sheriff may seise without any Office, &c. 21 H. 7. 7. a.

And

And so it is concerning the goods of
- Felons attainted. Fit. Coro. 285. 308. 368.
- Fugitives. Fit. Coro. 287. Stamf. 192. 193.
- Outlaws.
- Egyptians.

Waived goods, and goods confiscate, &c.

But by some opinions the Eschcator is always accountable for the goods of Felons and Fugitives, and the like; and not the Sheriff, save in a gross sum for the form of the profits of the County. Keil. 173. yet see the Sheriffs Oath, hic cap. 124.

Note that to lands and hereditaments, the King is intituled only or chiefly, by matter of Record. But for personal and transitory things, as Catalla Felonum, & Fugitivorum, Wreck of the Sea, Treasure trove, and the profits of the lands of persons outlawed in personal actions, and of Clerks convict of felony, the King shall be intitled thereto without any Office, or other matter of Record, 21 H. 7. 7. a. Perk. 5. 6. Stamf. de Prerog. 56. Co. 2. 52. 17. 12. & 11. 77.

And therefore for seising of Lands, the Sheriff must be well advised that he hath the Kings Writ, or other lawful Warrant or Commandment from the Kings Courts or Justices, or other lawful Authority, so to do, lest otherwise he prove a disseisor: See 3 E. 1. cap. 24. 17 E. 2. F. ass. 373. 2. ass. pl. 9. & Co. 8. 169. 170. Br. Prerog. 91. & hic postea cap. 122. a difference taken where the Sheriff shall to a thing virtute brevis, that is a warrant to him; otherwise where he doth it virtute officii.

But where the King is not to have seisin of the Land it self, but is only intitled to the profits of the Lands (as of the Lands of him that is outlawed in a personal action, or of a Clerk convict and the like) there the Officer may make seisure of the profits of such Lands without an Office, &c.

And so in all Cases where a possession in law of a Freehold is cast upon the King, the King by his Officer may enter upon or seise the Land it self, and take the profits thereof, without any Office found, &c.

But the Escheator is a more special Officer for finding out the Kings title to Lands or Tenements as is before shewed. And where the Office is found before him, he is chargeable: but where the Office is found before Commissioners, there the Sheriff shall be charged. Cro. 173.

Also for Goods and Chattels, &c. the Sheriff may seise them, for they do vest in the King without any Office, or Inquisition to be found thereof. 24 E. 3. Br. Prerog. 30. & 38. 21 H. 7. 7.

And it was adjudged Hill. 27 Eliz. that the goods of one that is outlawed are in the King from the time of the judgment pronounced, although that no seisure be made of them.

2. Where any Franchise shall be seised into the Kings hands, the King shall be answered the profits thereof, and the Sheriff is to seise such profits to the Kings use; (Br. quo Warr. 5. 7.) But such seisor must be after judgment given in a quo warranto, ibid.

as:
- The liberties of a City, or Town-Corporate, that have conusance of Pleas, or other Franchise.
- The office of the Warden of the Fleet, or of other Gaoler of fee.
- The liberties of Lords of Mannors, which have Hundreds, or Leets, Fairs, or Markets, Waifes, Estrayes, Wreck, Warren, Park, Catalla felonum, fugitivor. & utlagator. Tolle, and the like Assize of Bread and Beer, Pillory, Tumbrel, &c.

Not that such as have the keeping and correction of the Assize of Bread and Beer, if they have not a Pillory and Tumbrel to punish Bakers and Brewers that are faulty, they forfeit their Franchise, Keil. 148.

Also the Lord of a Leet shall forfeit his Leet, if his Steward shall take any money, or other reward, to spare the punishment of the Tumbrel, where one hath offended in the Assize of Bread or Beer. Cromp. 181.

By non User of a Franchise within time of memory, the Franchise is forfeited. Ibid. & 14 H. 7. 1.

A Fair or Market may be forfeited and seised, for non User thereof; or for misuser thereof. As where a man hath a Fair or Market to hold upon one day, and he holdeth it upon another day; or holdeth it two dayes together in one week. 2 H. 7. 11. 15 E. 4. 7. 22. Ass. pl. 34. Finch.

But Fairs to be holden upon principal Feast-days, or Sundays, they may be holden within three days before or after, upon Proclamation thereof first made, without fine, or fee to the King. 27 H. 6. c. 5.

And note that a sale made upon a Sunday, though in a Fair or Market overt, doth not alter the property of the goods. 12 E. 4. 1. Brian. 29 Ca. 2. Ca.

If the Lord of a Fair or Market shall take excessive Toll, the King may seize the Fair or Market. 3 E. 1. c. 30.

Nota que le vendor. ne paiera tolle mes l'achator. 28 Ass. Finch. 39.

Tolle est destre eire de chescun que achate ascun chose (in Faire, ou Market) *pur vender arere; mes cestuy que achata ascun chose la, pur son expence demesne, ne payer tolle pur ceo.* 9 H. 6. 45. Finch. 166.

Tolle ne serra pay pur choses poet al Faire mes pur choses que sont vend la: Et unc' per Custome auterment est. Finch 39.

Ne besoigne d'aver. Confirmation de Franchises, de chescun Roy, Coment que est issint uses. 1 R. 3. fol. 4.

Franchise vient al Roy per Escheate, ou aliter, unc' n'est extinct Keil. 72. *tamen vide* Co. 9. 25. *que ascun sont extinct, & ascun nemy.*

3. **The King shall have by his Prerogative all such things whereof the owner, or proprietor is not known, and that according to the old rule.** Quod non capit Christus, capit fiscus.

as
- **Tythes of a ground which is within no Parish (as in great Forrests, &c.) the King ought to have such tythes,** 22 Ass. p. 75. Fitz. Jurisd. 31. Br. Prærog. 143. **And it seemeth that there be some special places in every County, which be out of any Town or Hamlet.** Finch 80.
- **Estraies, waived Goods, Wreck, Treasure trove, &c.**
- **Whales, Sturgeons, &c.**
- **Swans that be wild, unmarked, and abroad at their liberty, the Sheriff may seize them, &c.** Co. 7. 16.
- **And by Gascoine,** 8 H. 4. **all such goods in** England **in which no man hath property, shall be adjudged to the King by his Prerogative, and the same law is of land, and the like.** Br. Prærog. 12.

Et unc' chescun home poit seiser tiel biens queux l'enemies le Roy port un Angliter, & poit retein. eux a son proper use, &c. vide 22 H. 3. fol. 16. & 7 E. 4. 14.

Auxi si le mere relinquish ou perde un grand quantity de terre sur le shore, le owner del mannor, ou del terre prochein adjoineant, avera ceo come perquisite, & nemy le Roy. Vide Dyer folio 326. vac. Br. v. 27. contra.

4. **Also in some Cases the King shall have a fine for the misuser of a Franchise, &c.** Br. Franch. 14. 22. Ass. p. 34.

Nota que Franchise allow in quo warranto, *ou in Eier, lier le Roy.* Br. Franch. 32, 40. & 10 H. 7. 14. a.

Regul. *Unc' vide libro Intrat. tit. quo Warranto in fine, Ou Judgment fuit done pur le def. & nient meins le Entre est, Salvo jure Regis, per que semble que le Judgment nest final, si le Roy ad auter droit.*

Bona felonum, fugitivor. & utlag. *& conusance de pleas, home ne poit aver ceux per prescription, mes tantum per charter & graunt le Roy: Et uncore si tiel charter soit allow in Eyre, semble que apres poient prescribe in eux per aide de tiel allowance.* Stamf. de Prerog. 50. Br. Prescrip. 18, 56, 59, 60, & 64. Co. 9. 29. a 29. a

Market,

Market, Fair, Hundred, Leet, Warren, & Parke, home port aver ceux per prescription cibien come per Charter le Roy, & s'ils vient al maines le Roy, uncore ne serra extinct. Br. Prescrip. 64.

But if any man do hold or have any of these without the Kings Grant, or lawful Prescription, it seemeth to be enquirable in the Sheriffs Torne as a Purpresture.

Nota que nul poet a ceo jour, faire Parke, Chace, ou Warren sans grant le Roy, Co. 11. 86.

Unc. home poit inclose son terre, mes il ne doit faire Parke, &c. de ceo pur aler de beasts Savage, sans licence le Roy; s'il fait, ils serra seise in manus Regis. Adg. vide Br. action s. Stat. 48.

Pur le difference inter Forrest, Chase, Parke, & Warren, vide Cromp. author des Courts. 146. & 148. *and Mr.* Manwood, *folio* 7. & 22.

Auxi vide ibid. queux sont beasts de Forrest, & de Chase, & queux de Warren.

Wrecke, Estray & waived biens, home poet aver ceux per prescription & sans charter, ou allowance in Eire. Vide 32 H 6. Abr. d'Ass. 79. & Br. Prescr. 32. 56, 60, 83. & Stamf. de prerog. folio 32. & 38.

Nota que bona felonum, fugitivorum, & utlag', & bona waivata, extrahura, & wreccum maris, *si ceux vient al maines le Roy per Escheate, forfeiture outlawry, &c. ils serra extinct, & merge in le Corone, & le Roy avera eux arere,* in jure Corone, Co. 9. 25. Vide Plo. 219. a. & 238. b Dyer 44.

Ou franchise serra parde, & serra seisie in maines le Roy, pur default de apparance in quo warranto, Br. quo war. 5. 7, 9, 11. Keil. 139. & 152. N. bre. 162.

Ou Franchise serra parde ou forfeiture, pur non user, ou misuser, vide Co. 9. 50. Br. Franch. 14. 22. & quo warrant' 8, 9. & Finch. 38. & 100. N. brc. 162.

The Book called the Mirrour of Justices treating of Franchises, lib. 4. **saith thus,** *Si bayliffe de Franchise ne face Execution de Retorne del vic del Commandement le Roy, le vicount poiet Enter en le Franchise, & recovera le Roy son seisin, & issint devient ceo guildable, que devant fuit enfranchise.*

Et uncore Franchise ne serra seise sinon al suite le Roy in quo Warranto, Fitz. Franch. 1. *Car. le* quo Warranto *est properment a trier le validity del Franchise usurpe sur le Roy, ou forfeit'; Ou le judgment serra que le Franchise serra ousle, & de seiser le Franchise in nosme de Distress, &c.* (Finch. 100.) *Et sur ceo issuer brief ou precept al vic. de seiser le Franchise accordant & de respond' al Roy del profit, &c.* Br. quo War. 5. *Fitz. le vic. poit seise les biens de Felons, Fugitives, Outlawes, Waiffes, Strayes, Wrecks, & tiels ex officio.*

Ou Franchise seisie in maines le Roy, poit estre replevie, vide Stat. de quo Warranto *Anno* 30 E. 1. Br. quo Warrant' 5. 7. & 11. Finch. 100. & Keil. 137. *Mes ceo semble destre le grace le Roy de granter Replevin de eux, & nemy del droit,* Plo. 372. a.

Ou Franchise ne poet estre graunt ouster. Br. Franch. 38. & quo War. 6. 8.

But note where the Lord of any Liberty, or Mannor, &c. hath by charter and grant from the King, or by lawful prescription or allowance, any of the Franchises or profits, &c. here above mentioned, there the Sheriff, nor his Officers, are not to seise them, or meddle therewith; except they shall be forfeited by the Lord, and judgment given for the King in a quo warranto, as aforesaid, vide the Statute de quo warranto, A. 18 E. 1. & 30 E. 1.

If the Lord of the Franchise, or Mannor, shall be outlawed or otherwise attainted of Treason, or Felony, or but outlawed in any personal action (as it seemeth) there the King shall have the goods and profits aforesaid, as well within the Franchise, as without.

Nota que les exitus, Fines, & Americiamenta de Banco, vel coram ipso Rege in Cancellaria, vel coram Thesaurario & Baronibus Scaccarii, vel coram Justic' Itinerantibus, vel ad Gaolum deliberandum, vel coram Justic' ad pacem &c. vel Justic' foreste, vel coram Seneschallo & Mareschallo hospitii Regis, vel Clerico mercatorum, ne sont unques allow al ascun in Leschequer, sans special parols & que sont specific in quel Court, ou auterfoits allow in quo Warranto, Dyer 269.

Auxi exitus tenen, vel fines & americiamenta sur vic. Constabul. vel aliorum Officior. Regis, ne sont allowes la, sans tiel clause sc. licet tenentes, vel ministri sui Officiarii nostri fuerint, eo que sont Regal, Dyer 269.

Auxi le Prerog. de An. jour & wast, nul mes le Roy poict ceo aver, coment que il claime ceo per charter, ou auterment. Stanf. de prerog. 50. & Fitz. Coron. 310. vide plus hic c. 14.

CAP. 8.

Suit.

Suit. Also it is parcel of the Sheriffs Oath truly to keep the Kings Suits: and if they have been concealed, or withdrawn, the Sheriff upon knowledge thereof, must cause them to be done, or restored again to the King.

Now Suit it is a service which a man ought to do, by reason of his person, or by reason of his land and tenure; and to performe this, he ought to go to the Court of the King (or of some other) there to do that which appertaineth to the nature of his Suit (be it to be a Judge, Juror, Cryer, Bayliff, or to serve the Process of the Court, and such like) And in such Cases the party ought to attend in the Court, and to do that which appertaineth to his said Suit. Vide 9 E. 4. 3.

And yet where a man by his Tenure is to come to a Leet, or Hundred, and to do there some special service, as to be Cryer, or Bayliff, &c. they are no Suit services. Finch. 145.

And

And this seemeth to be meant here of suit done, or due to be done, to the Kings Courts (sc. to the Torne, County Court, and other the Kings Courts:) and to this purpose there are two sorts of suits, sc. Suit real and Suit service.

Suit Real (or Royal) is a suit which by the Common Law is due to the Sheriffs Torne, or Leet, &c. (which are Courts Royals, viz. the Kings Courts, And to these Courts all men of the age of twelve years or above, shall be compelled to come in person to learn and know the Laws, so that they may not be ignorant of things that shall be there declared and given in charge, and whereby they shall be governed. And it is called Real or Royal Suit because of their allegiance, and this appeareth by common experience, when one is sworn (in those Courts to the King, and as in those Courts all men ought to be) his oath is, that he shall be loyal and faithful Subject to the King. And this Suit is not due for their land which they have or hold, but it is due only *ratione del resiancie del person*, by reason of their dwelling and aboad within the Hundred or Leet. Vide Finch. 125. & Termes del Ley, & Co. L. 100. *Royal.* Fitz. Bar. c. 211.

So that these Courts (the Sheriffs Torne or Leet) are principally to cause every man to do their allegiance to the King, and there to be sworn to the King to be his leige-man: And besides in these Courts they are to enquire of such things as pertain to the King, and Commonwealth.

But no man shall be compelled to do this Suit, but only where he is resiant or dwelling, and that but twice in a year. Vide Br. Leet. 39. 42. 12 H. 7. 18. & 25 E. 3. 23. Fitz. 161.

Suit to the County Court, is also a Suit Royal, and due by reason of resiancy within the County. Finch. 115. See hic tit. County Court.

And so it may seem thereby that both the Sheriffs Torne, and the County Court, are both the Kings Courts, And as the Sheriff by his Oath here standeth bound duely to keep the Kings Suits, so inclusive he standeth bound duely to keep his said two Courts (the Torne, and the County Court) and to see that all Suitors belonging to the same Courts, give their attendance, and do their Suit and service there.

Ibid. Suit Service, is a Suit which by the Common Law properly is due to the Kings Court (as to the Sherifts Torne or Leet twice a year) or to the Lords Court (from three weeks to three weeks, by the whole year:) And this Suit service is due by reason of the tenure of a mans land, and ought to be done at every Court of every Lord, where he holdeth any lands or tenements of them. *Service.*

That a man may hold lands by Suit service to the Sheriffs Torne, or to the Leet. Vide Fitz. 158. a. Fitz. Barr. 211. & t'mes del Ley tit. Suit.

Also a man may hold lands to do Suit service to the County Court, or Hundred Court, &c. Fitz. 158. a.

Pur

Pur suit reall, le partie que fait default serra primes amerce; Et apres serra distraine pur le amerciament. Finch. 123. Br. Suit. 2.

Pur suit service (ou suit del Court) le Vicount (ou Seignieur) poit distraine, le tenant, mes ne amercera luy. Br. Suit. 2. 6. 16.

Si le terre charge ove suit due al Roy veigne in maines de divers persons, chescun tenant serra charge ove le suit aperluy, &c. *chescun de eux fera suit.* 45 E. 3. f. 23. Fitz. Bar. 211. Ibid.

Per Statutum de Merton cap. 10. *Quilibet liber homo qui secta. debet ad Comitatum, Hundred,* &c. *vel ad Curiam Domini sui libere potest facere atturnatum suum ad sectas illas pro eo faciendas: In. ceo Statut' est intend tantum de Suite service; mes al Torne del vic. ou Leet, la le Suite serra fait in person, & nemy per Atturny.* Vide Regist. 172.

Al common ley devant ceo Stat. de Merton; chescun doit faire son Suite en proper person, & donque le mischief fuit lou home tient de. 2. Signiors fils tiener lour Courts ambideux al un mesme temps le tenant serra distrein, & nul default in luy, per que ceo Stat. ordeine que il poiet faire Atturny.

Le party poiet faire son Atturny, per briefe le Roy; Ou per son Warr. *south son Scale, ou per ses letters, sans suer ascun briefe. Et si le Court, ou Seigniour ou vic. refuse tiel son atturny, il poiet aver briefe de Attachment, & recovera ses damages, &c.* Fitz. 156. a. 157. c. d. & Fitz. Atturny. 106.

Briefe de Atturnato faciendo durer pur les vies del Signiour & del tenant: mes semble: que ceo determin per lalienation del Seigniour ou per lalienation ou alteration del tenancy.

Les parols del dit Stat. de Merton sont, Quilibet liber homo, &c. unc. uncore feme, Ecclesiastique person, ne Enfant deins age de 12. ans ne fera ascun Suite al Torne, ou Leete; mes auterment del Court baron, &c.

Suite est dit in. 4. Mannors, touts queux semble destre deins ceo Stat. Termes del Ley.

1. *Suite Reall, est per cause del Resiancy (ut super.)*

2. *Suite Service, est per reason del Tenure, ut supra.*

3. *Suite Covenant est lou home per Indenture Covenant de faire suite a son Court; & pur ceo home avera briefe de Covenant.*

4. *Suite Custome, & ceo est lou jeo & mes Auncestors ont estre seisie de nostre suite demesne, & nostres Auncestors de temps dont memory, &c.*

Auxi ceo est lou Coppiholders ou auter Customers tenants &c. (que Estate il ad) ont use de faire Custome service; & pur default del ceo Suite Custome, le terre serra seisie, &c.

And by the word Suits may be understood the Kings Suits in Law, sc. that the Kings Suits in Law shall be preferred, &c. wherein the Sheriff is for the Kings profit to do his best endeavour according to his Office, sc. that the Kings debt be first levied. Vide hic cap. 10. 19. 25. & 58.

CAP.

CAP. 9.

Rents.

The Sheriffs also by his Oath is bound not to assent to the decrease, to the lessing, ne concealment of the Kings rents, and whensoever he shall have knowledge that any of them been concealed or withdrawn, he shall do his true power to make them to be restored to the King again; and if he cannot do it, he shall certifie the King, or some of his Council thereof, &c.

Note that the Sheriff is Ballivus Comitatus (as I said before) and his County is also called his Bayliwick; and as a Bayliff of Mannor is to gather up his Lords Rents, and other duties, so the Sheriff his office is to gather up not only the common monies and profits of the Shire which be due to the King within his County, but also to gather up the Kings Rents within his Bayliwick (as it seemeth) and for which he may distrain. See Fitz. 234. h. But at this day this rather belongeth to the Office of the Kings Receivers, &c. Or to the Escheator to enquire thereof. Finch. 127

For there be now particular Collectors and Receivers of the ordinary rents of the Kings lands, &c. which do answer the same unto the Exchequer. And the Sheriff medleth not now with the gathering or levying thereof, except it be by Process out of the Exchequer, But the Escheator is the Officer to whom Process is usually directed concerning the Kings Revenews, &c. Co. 4. 57. Fitz. 78.

And yet at this day if the Sheriff shall distrain the Kings Farmor or Tenant, for Rent due to the King, &c. and shall account for the same Rent in the Exchequer, this seemeth to be a good justification for the Sheriff, in an action of Trespass brought against him for taking the Tenants Cattel, &c. Liber Intrac. tit. Trespass.

Also for the Kings ordinary Rents, upon Process directed to the Sheriff for the levying thereof, the Sheriff may levy the same, upon the body or goods of the Kings Tenants, or of his Sureties (for default of the Tenant) or upon his land, or of his Heirs, or upon the Executors, &c. of the Kings Tenant, or upon other the possessors of his lands or goods.

By the word Rents, seems to be meant not only Rent services and Rent charges, &c. (due to the King) but also Farmes or Farm Rents due to the King: sc. Rents reserved in fee Farm, or upon Leases.

You shall find by the Statute made Anno 51 H. 3. de Scaccario, that Sheriffs might let to Farm the Kings Wards and Escheats, and were answerable for the Rent, &c.

Also

Also by the Statute made 10 Ed. 1. de Scaccario, it appeareth that Sheriffs are accountable yearly in the Exchequer for the Farms of Serjeants and Assarts, the Farms of Cities, Boroughs, and Towns, and other Farms, &c. 10 Ed. 1.

Also by the Statute of 34 H. 8. c. 16. it appeareth that Sheriffs were charged with one Farm demanded in one whole sum, growing of the issues and profits of certain of the ancient Demesnes of the Crown; As also of certain Rents thereto belonging: And with one other Farm growing of the perquisites and profits of their Courts: And with one other Farm of Purprestures, Assarts, Serjeanties, and minute Rents, &c.

These words Purprestures, and Assarts, seem here to be trespasses or offences done in Forests, hurtful to the Vert and Venison of the same: This Purpresture of the Forest, is by building and new erecting of houses, and other Inclosures within a Forest, without the special licence of the King, or of his Justice in Eyre. Manwood 54.

And the word Assart is an ancient English word signifying to make plain, &c. Assartum est quod redactum est ad culturam: and an Assart of the Forest, is the destroying of a covert, by cutting and stubbing up, or plucking up by the roots those Woods that are thickets or coverts of the Forest, to make the same a plain, or arable land; this is fineable to the King, if it were not done by the Kings licence: And if any man would have the same to continue, he must compound with the King, or with his Justice in Eyre. Now upon composition for the continuante of such Assarts, or for the toleration or suffering of such new erected buildings, or inclosures within the Forest, there was a yearly Rent reserved to the King, which was at the judgment and discretion of the Lord Chief Justice in Eyre of the Forest, and entred of record at the time of the arrenting thereof. And in the times of King Edward the First, Second, and Third, when the Justices of the Forest did usually hold their Iters, great benefit did yearly grow to the King by these fines and Rents. But of later times, there hath been seldom any Justice seat at all kept for Forests: and when kept, very slenderly performed: the records not kept, or not retorned into the Exchequer; and so the said Rents are now unknown, &c. See Manwood & Minsh.

Also by the Statute of 14 Ed. 3. c. 9. it appeareth that the Sheriffs did Farme of the King the Hundreds and Wapentakes. 14 Ed. 3.

Also by the Statute of 1 H. 4. c. 11. it appeareth that the Sheriffs were charged with the ancient Farmes of the Counties; and that they Farmed the Counties of the King. Quære what these Farmes of the Counties and of the Hundreds are. 1 H. 4.

And by the Statute of 4 H. 5. c. 2. Sheriffs shall be charged to the King for all such things as be or run in yearly Farms or demands.

See also the Statute of 2 & 3 Ed. 6. c. 4. of Farms, and Vicountiels, &c. due to the King and with-holden from him.

Note that there be certain Farms called Vicountiels, which the Sheriff for his time payeth a certain Rent for to the King, and maketh what

what profit he can of them: And these Vicounticls seem to be the Farms mentioned in the former Statutes of 10 Ed. 1. 14 Ed. 3. 9. 1 H. 4. 11. 4 H. 5. 2. 34 H. 8. & 2 & 3 Ed. 6. c. 4. here before mentioned.

But more particularly these Vicounticls are said to be certain duties of ancient time, due to the King, &c. As for Castle Guard; for the Sheriffs aid; for the Leet Fee, &c.

And these are commonly called certainties, which are gathered up by the Sheriff, or their Bayliffs. And see Cro. 47. b. where a Sheriff prescribed, pro Auxilio Vicecomitis.

And for the Farms called Vicounticls, for which the Sheriff for his time payeth a certain Rent to the King, and may make what profit he can of them. See the Statute, Anno 4 H. 5. 2. All Sheriffs shall have allowance upon their accounts, by their oaths, of things casual, that be not in yearly Farms or demands.

2 H. 7. 5. By Brian and Ratcliffe, the Sheriff so soon as he is made Sheriff, is accountable to the King, of all Farms, Rents, Issues and Profits of the County, which run in account under the name of Vicounticls: But for the Extreats of the Green Wax (sc. out of the Exchequer) and such others (as for the fines and amerciaments set in any Court upon Offendors, issues lost for default of appearance, the Kings debts, &c.) the Sheriff is not chargeable as Sheriff at the first, nor at any times after, nor to levy the same, except that the summs, sc. le' Ltreats del sommes come to him out of the Exchequer, and then when he hath them, he is chargeable and accountable.

And by Blage Anno 6 H. 8. the Sheriff is accomptable for the profits of the County, but (saith he) that must be understood in a summ in gross for the Farm of the profits of the County. Keil. 173. hic c. 122.

What the Revenues, Issues and Profits of the County be: See 20 H. 7. fol. 12. hic antea cap. 3.

In an action of trespass brought against the Sheriff, for breaking the Plaintiffs close, and taking his Cattel, &c. the Sheriff justified for distraining for Rent due to the King, in jure Corone, by prescription as parcel of the Farm and profits of his County of N. to the use of the King, &c. and that he had accounted for the same in the Exchequer. Libro Intrac. tit. Trespass, in Rent div. 6.

Note that in the former case, the servant of the Sheriff justified by the commandment of his Master, &c. Et quod in clausum prædictum portis inde tunc apertis intravit, &c. So as it seemeth the Officer cannot justifie to break open a door, or gate, to distrain for the Kings Rents, &c.

Mes nota que si home tient del Roy, & son Rent est arere, le Roy (ou ses Officers) poient distreine in les auters terres, cibien tenus des auters, come de luy mesme: Et eadem lex pur son Fee Ferme. 44 E. 3. Br. Prerog. 77. & 13 H. 4. 6. Plo. 239. a. Finch.

Et issint est pur Rent charge, Roy poet distr' pur ceo in touts auters terres. 13 H. 4. Br. Prerog. 68.

Si tenant le Roy alien ascun parcel sans Licence, le Roy (ou son Officer) poet distrain pur tout son Rent, in le parcel issint alien, mes s'il ad licence, &c. le alienee ne sera charge ouster le quantity del terre que il ad purchase; & a cel purpose il poet aver brief de Deonerando pro rato portione. Fitz. 235. a.

CAP. 10.

The Kings Debts.

The Sheriff from time to time during his Office, shall with as much convenient speed as may be, levy the Kings monies, upon all such Schedules, Estreats, and Proces as shall be directed to the Sheriff out of his Majesties Court of Exchequer.

And at the Kings Courts shall deliver into the Exchequer the Estreats of Amerciaments, Fines, Issues, and other things assessed, &c. before them. See hic c. 13. 90. & 122.

Debts. By the Statute 9 H. 3. c. 8. the King nor his Bayliff shall not seize 9 H. 3 c. 8.
Land. any land or rent for any debt, as long as the present chattels of the debtor do suffice to pay the debt, and the debtor himself be ready to Plo. 440.
Sureties. satisfie therefore. Neither shall the pledges or sureties of the debtor be distrained, as long as the principal debtor is sufficient for the payment of the debt: and if the principal debtor fail in the payment of the debt, having nothing wherewith to pay, or will not pay where he is able, the pledges shall answer for the debt: and then if the pledges will, they shall have the lands and rents of the debtor, until they be satisfied of the debt, which they before payed for him (except that the principal debtor can shew himself to be acquitted against the said surety) Fitz. 137. c.

Nota que tanque le Stat. de 33 H. 8. c. 39. *le Roy ne poet pur dett, touche le terre, ou heir, d'ascun Dettor, si les biens del dettor fuer suffic' de satisfier le debt, & ceo fuit per force del primer part del avantdit Stat. de* 9 H. 3. c. 8. vide Plo. 440. a.

Mes quant al prochein part del dit. Stat. ceo semble d'estre void, quant al Roy Car in chescun manner le Roy avera sufficient suerty de tout que a luy appertein, tout soit que le principal soit sufficient ou nient suffic'. Et in chescun case si le principal soit assets suffic' uncore le Roy poet eslier, le quel il voet distrain le principal, ou les pledges.

Nota auxi que le forme del Eschequer (ut dicitur) est, que si un home prist un farme de Roy, & trove suerties per le farme ou rent, que si le rent soit arere, le summons del Pipe isser Cibien envers les pledges come vers le principal: Mes le vic' per force del dit Stat. ne fera execution des biens les pledges ou mainpernors si non per default del principal.

Auxi

Auxi le Roy poet distr. ou charge les pledges ou suerties sans ascun especialty: mes envers les pledges nul action est done al Com. Ley per ascun party sans specialty, ou Recognizance forpris pur le Roy, vide 44 E. 3. fol. 19. Fitz. Dett. 126. per le darein case.

And now by the Statute of 33 H. 8. c. 39. not only the land, but also the Heir of the Kings debtor are chargeable to pay the Kings debt, Plo. 440. yea the Sheriff may levy the Kings debts either upon the body or goods of the debtor, or his sureties, or upon their lands in their own hands, or in the hands of their Heirs, or Feoffees, or of any other person claiming or having the same from them by descent, or purchase. Also the Executors, Administrators, Assignees, and other possessors of the goods of the Kings debtor, are chargeable to the Kings debt. See hic postea.

9 H. 3. c. 18. Also by the former Statute of 9 H. 3. cap. 18. If any that holdeth of the King any Lay fee do die, and the Sheriff or Bayliff do shew the Kings Letters Patents or Summons for debt which the dead man did owe unto the King, it shall be lawful to the Sheriff or Bayliff to attach and inrol all the goods and cattels of the dead, being found in or upon the Lay fee to the value of the same debt by the sight of lawful men: So that nothing thereof shall be taken away, until the King be clearly paid off the debt, and the residue shall remain to the Executors to perform the Testament of the dead, &c. *Roy serra primes pay.*

Nient obstant que ceo Stat. (de 9 H. 3. c. 18.) *parle lou ascun tient del Roy ascun Lay fee, &c. Unc. ceo Statute serra intend des ascun auters Dettors le Roy en general.*

Auxi si ascun home soit imprison pur le dette de ascun auter home, que de Roy, en quel Lieu, qui il soit, sil con. luy mesme dettor al Roy, la il serra remove al Fleet sur tiel Conusance, & quant le Roy est satisfie donque il serra remaund al auter lieu (ou prison) ou il fuit imprison al primes sil ne soit detter al Roy adonrs, &c.

Le Summons mention in ceo Stat. de 9 H. 3. cap. 18. *semble destre un Scire facias hors del Eschequer; Et sur tiel Summons ou Proces nient obstant le dit Stat. dit, Liceat Vicecomiti, &c. attachiare & imbreviare, Omnia bona & catalla defuncti, &c. unc. le vic. poet vender eux, solonque le quantity del dett, & per visum vicinorum*, sc. *q. les biens seront preise per eux.*

51 H. 3. Afterwards by the Statute De districtione Scaccarii, made Anno 15 Hen. 3. Forasmuch as the Commonalty of the Realm had sustained great damages by the wrongful taking of distresses, which had been made by Sheriffs, and by other the Kings Bayliffs for the Kings debt, or for any other cause: it was therefore provided and ordained, That when a Sheriff, or any other man (upon Process out of the Exchequer) doth take the beasts of other by way of distress for the Kings debt, &c. they to whom the beasts do belong may give them their feeding without disturbance (so long as they be impounded) without giving any thing for their keeping. *The owner may feed cattel impounded.*

No sale within fifteen days. And that the beasts, nor no other distress taken for the Kings debt, nor for any other cause be given ne sold within fifteen dayes after the taking: See Br. Distress. 32. & 72. and the Stat. 51 H. 3. & 7 E. 6. cap. 1. Ibid.

And if any bring the tally of a payment made in the Exchequer, the distress shall cease: and if he bring the tally (or acquittance of any Sheriff or Bayliff) of payment made to them of the thing demanded, and will find pledges that he will appear in the Exchequer upon the next account to do as right shall require, then the distress shall cease, and the Sheriff or Bayliff shall cause him to be attached that ought to have acquitted him, that he may appear upon the same account to do as right shall require, and there shall have the names of the pledges. Ibid.

Cattel not distrainable. Also it is provided by the same Statute, that no man of Religion nor other, shall be distrained by his beasts that gain his land, nor by his sheep for the Kings debt, nor the debt of any other man, nor for any other cause by the Kings or others Bayliffs, but until they can find another distress or cattels sufficient, whereof they may levy the debt, or that is sufficient for the demand (except impounding of beasts that a man findeth in his ground, damage fesaunt, after the use and custom of the Realm:) and that such distresses be reasonable after the value of the debt or damage according to the value, and by the estimation of neighbors, and not by strangers, and not outragious: Howbeit the King willeth and commandeth that Sheriffs, or their Bayliffs that have received the Kings debt of the summons of the Exchequer, and have not acquitted the debtors thereof at the next account, shall be punished, 52 H. 3. cap. 4. 51 H. 3. 52 H. 3. c. 4. See 28 E. 1. c. 12. Fitz. 174. b. P. distr. 8. 11.

A distress shall be reasonable.
Le vic' acquitera le dettor.

Also by the Statute of 28 Ed. 1. no distress shall be taken of Plow-cattel for the Kings debt, &c. And such distresses shall not be over great, nor driven too far. 28 E. 1. c. 12.

The Kings debts. Extreats of Fines, &c. shall be delivered in the Exchequer. By the Statute De Scaccario, made Anno 51 Hen. 3. It was ordained, that all the Justicers, Commissioners and others should from thenceforth deliver into the Exchequer at the Feast of Saint Michael from year to year the Extreats of Fines, and Amerciaments made and taxed before them, and of all things whereof the Extreats are wont to be delivered there: and that they of the Exchequer shall make Extreats of the summons through all Shires, &c. De pace 560. & Stat. 15 E. 2. 51 H. 3. & 15 E. 2.

Le vic' acquitera le dettor. Also by the Statute made 3 E. 1. c. 19. It was ordained, That Sheriffs, &c. (which have levied or received the Kings debt) should from thenceforth lawfully acquit and discharge the debtors at the next account after they have received such debts (and then the debt shall be allowed in the Exchequer, so that it shall no more come in the summons:) And if the Sheriffs otherwise do, and thereof be attainted, he shall pay to the Plaintiff thrice as much as he hath received, and shall also make fine at the Kings pleasure: and besides the Sheriff stands bound thereto by his Oath, Article, 4. See also the Statute of Westm. 4. als. dictus Stat. de Attinctis. Anno 13 E. 2. 3 Ed. 1. P. Account. 52.

Also

3 Ed. 1. 29. Also by the same Statutes, Proces (sc. the summons of the Exchequer) for the levying of the Kings debt, shall be shewed to the debtor that demands the sight thereof without denial or fee. And the Sheriff shall make Tallies (or acquittances) to all such as shall pay him (or his Officers) their debt due to the King, &c. 27 Ed. 1. c. 2. *Proces shall be shewed.*

Note that the Summons of the Exchequer is a Scire facias. If the debtor hath once paid the Kings debt to the Sheriff, &c. and notwithstanding the same be another time demanded of the party, &c. the said Sheriff shall pay to the party grieved his treble damages; and besides shall make fine to the King, 3 E. 1. c. 19.

Also by the Statute 1 R. 2. c. 5. when any debts be once paid, and the Tailles thereof made, rejoined, and allowed in the Exchequer, this debt shall never after come in demand. And if any Clerk of the Exchequer shall make any Proces after the Taill allowed: Or if any Clerk of the Exchequr shall make out any Proces for a debt that is
1 R. 2. c. 5. paid, he shall lose his Office, and be imprisoned until he hath made gree with the party, &c.

42 E. 3. 7 H. 4. Again by the Statutes of 42 Ed. 3. c. 9. & 7 Hen. 4. c. 3. Estreats *Estreats sealed*
Lib 4. 16. sealed under the seal of the Exchequer, shall be shewed to the party indebted, by the Sheriff, or his Officers, when they levy the Kings debts, and that which is paid shall be totted. *shall be shewed.*

And Sheriffs shall account by Estreats so totted, and by none other: and the copy of the Estreats, wherein they touch the Franchises of Lords, shall be delivered to the Bayliffs of the Franchises, under the seal of the Sheriff, and the same Bayliffs shall yield their account in the Exchequer, by the same copies so delivered, 42 E. 3. c. 9.

Note that the Green Wax of the Exchequer, is a word used for the Estreats delivered out of the Exchequer to the Sheriff, under the Seal of the Exchequer Court, to be levied in the County, Minsh. & vide hic cap. 122.

28 E. 1. 12. If the Kings debtor can find sufficient sureties, to pay to the Sheriff the Kings debt, before the day of the Retorn of the Writ, the Sheriff shall deliver the distress (or beasts) taken again; otherwise the party may have an attachment against the Sheriff or Officer, &c. Fitzh. 174. b. c. *Distress redeliver.*

Detts poient estre due al Roy in divers mannors: sc. per atteinder utlary, forfeiture, ou done, ou per Judgement, Recogn. ou Specialty.

Nota que touts obligations recogn. & specialties faits al Roy, serra de force del Stat. Staple: vide hic Stat. Staple, & Stat. 33 H. 8. c. 39. *Regule.*

Les suits le Roy serra prefer devant le suite d'asun auter, & le Roy avera execution pur ses debts, devant ascun common person: sc. si son suit soit commence ou proces soit agard pur le dit dett, devant l' auter ad Judgement, vide Stat. 9 H. 3. c. 18. & 33 H. 8. c. 39. Br. Prerog. 71. *Et hic postea Execution sur Stat.* vide Co. L. 131. b.

Note

Nota que le Roy poet priviledge son dettor, que nul avera execution vers luy, tanque le Roy soit satisfie. Br. Prerog. 105. Co. L. 131. b.

But the other Creditors may have the actions against the Kings debtor, and proceed to judgment, but not to execution, unless they will pay the Kings debt, &c. Stat. 25 E. 3. c. 19.

Yet in some cases the Subject shall be satisfied before the King, for regularly whensoever the King is intituled to any fine or duty by the suit of the party, the party shall be first satisfied, as in a Decies tantum. And so if in an action of debt, the Defendant deny his deed, and it is found against him, he shall pay a fine to the King, but the Plaintiff shall be first satisfied: And so in all other like cases: And so it is in Bills preferred by Subjects in the Star-Chamber, their costs and damages (if any be) shall be answered before the Kings fine, &c. Co. L. 131. b.

Distress. *Si le vic' (ou ses officers, ou ascun auter) distreine pur dett le Roy, &c. les beasts del carucat ou barbitts (lou ils poient trove auters); Ou prist excessive distress; ou amesne le distress trope longe; le party grieve poet aver attachment sur le Stat. vers tiel Viscounte ou officer, &c.* Fitz. 174. b. c. *ou le party poet aver action de trespas vers le Viscounte*, Fitz. 90. b. *Uncore* vide Fitz. tit. Avowry 239. *que distress ne serra dit excessive, ou le Roy est party.*

The Sheriff and his Officers may distrain for the Kings debt, &c. in the Kings High-way, or in the common street, 52 H. 3. c. 15. Fitz. 173. f. 43 E. 3. 30. Fitz. Avow. 87. & Fitz. 173. f.

And yet if they be the beasts or goods of a Parson, &c. they may not be distrained in the Kings High-way for the Kings debt, 9 E. 2. cap. 9.

Neither may the Sheriff, nor any other Officer, distrain in the glebe of Parsons, nor in the ancient fees of the Church. Ibid. & Fitz. 173. e.

Et si ascun vic' ou auter person fait contrary al ceo Stat. donque il que est issint distrain poet suer brief sur ceo Stat. Commandment le vic' &c. quod non distringat, &c. & que sil ad distrain al contrary, quod sine dilatione relaxet, &c. Ou le party que est issint distrain poet aver action sur ceo Stat. envers le vic' &c. Fitz 173. e. f.

Mes l' officer le Roy poet bien Enter in ascun personage pur seiser biens forfeits: Et si le Parson soit utlage l' officer poet seiser ses biens.

Also they may distrain for the Kings debt in the possessions of Ecclesiastical persons (not being the ancient fees of the Church in the time of King Edward the Second) 9 E. 2. c. 9. Fitz. 173. e. 174. a.

And by the book 27. Ass. p. 66. the Kings Officer may distrain for Issues in the Church or Sanctuary: sc. If he can find no goods elsewhere to distrain, Br. Distress. 35. Co. 5. 92.

But they may not distrain or take for the Kings debt (or for any issues or amerciaments due or forfeited by any Ecclesiastical person) any

any goods which do belong to the Church, or Parish, and if they do, the Churchwardens may have their action against the Officer for the same.

They also for the Kings debt, may carry or drive the distress out of the County (as it seems). See Fitz. Barr. 275. & Distress. 16. And yet they may not drive any distress too far. See the Statute of 28 E. 1. cap. 12.

Also they may sell (after fifteen days) a distress taken by them for the Kings debt. See Br. Distress. 32. 40. & 72 & Stat. 51 H. 3. sc. if the debt be not satisfied, &c. in the mean time. *Prerogative Regis.*

And so of a distress taken for the xv; or for charges of the Knights of the Parliament. 8 R. 2. & 11 H. 4.

But for the Kings debts, as also for fines, issues, and amerciaments, the Sheriff is not chargeable or accountable for the same, neither may he distrain for, or otherwise levy the same until he shall have warrant to levy the same by Estreats, &c. under the Seal of the Exchequer, and those Estreats shall mention how much every one is to pay; and by those Estreats the Sheriff is to receive them, and to make acquittances or tallies, according to the said Statute of West. 1. cap. 19.

Queux persons, & terres, serra chargeable al payment del Debts le Roy.

N*Ota que Debtors le Roy (sur specialty) lour Corps, terres & biens, & lour heirs, executors, administrators, & assignees, & auxi les possessors del biens le mori, sont chargeable.* Co. 11. 93. plus hic c. 25.

Mes si un joint tenant in fee simple soit in Debt al Roy, & devy nul extent serra sue envers le terre in mains del Survivor. Plo. 321. Co. L. 185.

Le heire del Debtor le Roy, (que ad terre per discent, ou done son auncestor) serra chargeable. See hic tit. Statute staple.

Issint le heire in taile est chargeable. See ibid.

Debtor le Roy devy sans Heire ou Executor, proces serra fait vers ses feoffees, de respond' & satisfier le Roy. Dyer 160.

Terres del Debtor le Roy, vient al maine, de divers persons, ils serra tonts charge; & tout le terre, &c. & chescun parcel del ceo, serra entierment & nemy severalment charge. 33 H. 8. cap. 39. P. Account' 9. & Co. 7. 20. b.

13 Eliz. 4. *Queux Accountants, ou Officers avera lour terres, &c. liable ad payment del Debts le Roy, in tiel manner come sils ussent estre lie al Roy per obligac' &c.* vide Stat. 13 Eliz. c. 4. P. Accountants 29.

Auxi ceux persons ensuants sont accountable al Roy, sc.

1. *Chescun*

1. *Chescun que prist ascun biens le Roy.*

2. *Chescun que enter en ascun terres le Roy per tort.*

3. *Officers le Roy, que dispose son Treasure sans garrant south le Grand ou Privy Seal.*

4. *Feasors d'illoyal garrant.*

5. *Receivers sans loyal garrant.*

6. *Cestuy que est instrument, ou means per que le Roy ad perde.*

7. *Stewards de Mannors ou Courts le Roy; que assesse petit fines, & prent bribes.* Co. 11. folio 90. &c.

Si terres d'ascun accomptant al Roy; Ou si ascun argent biens ou chattels personals de Roy veigne al maines d'ascun subject (per matter de Record, ou per matter en fait) le terre de tiel subject est charge per ceo, & subject al seiser le Roy, en quecunque maines que il. veignont apres (soit il per discent, ou per purchase, ou auterment) Car le Roy poet aver cel seisie en les maines del Debtor, & per mesme reason en les maines de chescun que vient eins desouth luy, Quia Nullum tempus occurrit Regi. Cromp. author. des Courts 106.

Accountants purchase terres in le nosme de auters persons, serra liable al payment de debt le Roy. P. Accountants 31. Co. 11. 90. &c. Ibid.

Trove fuit per Inquisition, que Customer que fuit in debt al Royne purchase terre ove argent le Royne, & per Covin ad cause le estate d'estre fait a son amy, ceo fuit seisie en maines le Royne tanque, &c. Dyer 160.

Le Statute de Accountants fait. 13 E. c. 4. *ne extend, al terres del Evesques queux ont collection del subsidies ou Tenths,* P. Accountants 33. Ibid.

Ne extendera al ascun Accountants, sinon que son annual receipt, collection, ou charge, exceede le summe de 300 *l.* P. ibid. 34.

Nec extendera al ascun Accountants, queux ne sont de faire present payments, &c. P. ibidem 35.

Nec entendera de charger ascun Vicount, Escheator ne Bailiff de liberty, ne lour terre, &c. pur ascun chose touchant lour Offices; ne pur ascun money per eux receive, per reason de lour Offices, P. ibidem 36.

Uncore chescun de ceux persons, & lour terres, serra liable al payment del debts le Roy, in mannor come ils fuer' chargeable devant.

'Mes si accountant le Roy, possesse dun terme pur ans, vend ceo bona fide *& le vendee enter, adjudge que cest lease ne serra extendable ou liable al debt le Roy, car c'est forsque chattel: Auxy* Receiver, *ou auter accountant in debt al Roy, ne serra in peior case que une felon ou traitor, queux apres felonie ou treason, & devant conviction, poient vend'* bona fide *pur lour sustenance, &c. lour chattels real ou personal.* Co. 8. 171.

Si

Si Debtor le Roy moruft, le Roy serra primes pay son debt. 9 H. 3. c. 18. See Br. Prerog. 71. & hic postea execution sur Stat.

Le executor & administrator del debtor le Roy, aiant assets, sont chargeable al debt le Roy, &c. 33 H. 8. c. 39. *Et semble que le Common Ley fuit issint, devant ceo Stat.* Br. Prerog. 126.

40. Ass. p. 36. *Si un Jointenant soit debtor le Roy, le possession de son Compagnion ne serra charge, mes tantum le possession que appertain a luy que est le debtor: uncore per* Thorpe, *si l'un n'ad riens l'auter responder.* Quære.

Baron & feme ont terme, & le baron receiva les deniers de Sr. H. Sp. *que fuit atteint (per que les dits deniers pertein al Roy) & puis le baron devy le Roy sur ceo matter trove, avera le Lease le baron & feme in execution, &c.* 50. Ass. Pl. 5.

Br. Distr. 72. *Mes le Roy ne poit distrain pur debt le baron, sur le dower la feme, ne in sa Inheritance, ne in le joint estate ou purchase que el aver ove son baron: mes si le baron fuit in debt al Roy devant le coverture, la le Roy poet distrain in le dower del feme.* Vide Fitz. 150. q. & 151. Co. L. 31.

Vide le case Sr. Will. Candish *Treasurer del Chamber, il estreant seisie del terre, Covenant d'estoyer seisie de ceo, al use luy mesme, & sa feme, & le heirs le baron, & devy la feme prist auter baron & proces ad Computandum issuist envers le 2. baron & sa feme (qui sunt retorne terre tenants in jure uxoris) de accompt. pur le arrerag. due al Royne, &c. Et fuit adjudge que ils accompt. quia terre tenants de ceo terres de que Sr.* W. Candish *fuit sole seisie apres l'office a luy grant. Mes si la feme ust estre joint purchaser devant l'office grant, ceo terre ne serra liable.* Dyer 224. 225. & Plo. 321.

Auxi vide Fitz. 45. 46. *Que si le viscont ad proces hors del Exchequer a levier les debts le baron, que il doit al Roy, ou si le viscont ad proces hors del auter court de levier certain debts due per sa baron al auter person, uncore le viscount ne doit distrainer in le terres que le feme (apres mort son baron) tient en Dower, ou de joint purchase ove sa baron, ou de sa inheritance demesne.*

Et sic vide que le Roy, ou ses officers (sur proces, &c.) poient distrain pur det due al Roy: Et si home soit indet al Roy, quel debtor ad tenants que doient rent a luy, le Roy poit faire levy son det sur ceux tenants (sc. *de lour biens) & ceo serra bone barre pur eux vers lour Seignior, que est debtor al Roy, & que ils ad ceo pay al Roy per levy, &c.* 21 H. 7. 12. Br. Prerog. 39.

Nota debtors le Roy ferra gree al Roy pur lour det in le Eschequer, & nemy in Banco, nec in ascun auter court (come semble.) Vide Fitz. Decies tantum 12.

Mes ore per le Stat. 33 H. 8. cap. 39. *Suits pur debts le Roy, & auxi Composition pur eux (come semble) poient estre en les Courts ou ils sont due,* sc. *en les several Offices ou Courts del Duchy, Court de Augmentations, & Court de Gards, &c.*

Deniers bail in banco, ou in auter Court, poit ester stay & arrest la, pur det le Roy, ibid.

Si deux sont indict al Roy, & le Roy release al un de eux touts dets, ceo ne Releaser l'auter. 2 R. 3. fol. 4. Br. Prerog. 124.

CAP. II.

Issues.

Issues. THe Sheriff so soon as he is made Sheriff is accountable to the King in the Exchequer for all manner of Issues and Profits of the County, which run under the name of Vicounticls, 2 Hen. 7. fol. 6. yet he is accountable for these in a Summ in gross. See Keil. 173. hic cap. 9.

But for other Issues the Sheriff is not accountable, nor shall be charged therewith, until they shall be Estreated under the Seal of the Exchequer, and the same Estreats delivered to the Sheriff: Neither shall the Sheriff levy any such Issues, without such warrant. Vide Stat. 27 Ed. 1. c. 2.

And then by his Office he is (upon such Process out of the Exchequer, &c.) to gather up, and to bring into the Exchequer such Issues and Profits, &c. Stat. de finibus. 27 E. 1. cap. 2. 42 E. 3. c. 9. 2 H. 7. fol. 6. & Br. Patent. 105.

Exitus (Issues) pluraliter usurpatur, & Redditus annuos, vel alia terrarum commoda significat. *Cow. Index.*

The word Issues (in our Law) is sometimes used for the profits growing to the King, &c. as an Amerciament, Fine, Forfeiture or Punishment; assessed upon Jurors, &c. for default of appearance, &c. And sometimes for the profits of Lands or Tenements themselves.

And so the word Issues (in our Law) seemeth to be taken three ways, or in three manners.

First, for such Issues and Profits of the County, which go under the name of Vicounticls, of which see hic antea cap. 3.

Secondly, for the Issues and Profits of the Lands themselves: as where the King is entitled to have the Lands or profits of Lands of persons Attainted, or Outlawed, or for Alienation without Licence, for Alienation in Mortmain, for a condition broken, or the like; Of this also see hic antea, cap. 6. & 7.

Thirdly, for Issues to be lost for default of apperance (sc. by Jurors, or by the Tenant, or Defendant, &c.) of which here: but these last the Sheriff may not levy, until they be Estreated to him, &c. for without warrant he may not levy the same.

Issues perde per default. Issues set and retorned by the Sheriff, upon the Defendants, or Jurors, shall be forfeit to the King, by reason of the default of appearance, and shall be levied by the Sheriff, and of these, See hic postea Retorne of Issues. Cap. 89. 90. & 91.

Issues forfeited by witnesses for default of appearance. See the Stat. 12 E. 2. cap. 1. But this seemeth to have been in Cases where the Deed was denied, and then Process went out for them, and that they were to be joined with the Jury, &c. Vide Fitz. Process 17. 126. 141. 181, & 5 H. 7. fol. 8. & Co. 1. 6.

And if such Issues Retorned upon any man be never so great, the Party hath no Remedy.

Finch. 86. *Sur Grand Cape, le terre serra prise en mains le Roy, & le Vic' serra Accomptable pur les Issues del dit terre vide* Fitz. Amerc. 1. & Disceit. 33. Stamf. de Prerog. 84. b. Co. 7. 38. *Auxi quant ascun action Real* (sc. *de plee de terre) est port, & le tenant appear & apres fait default, un petit Cape issuer de seiser les terres en mains le Roy, &c.*

Et q. chescun cape est al use del Roy termes del Ley, tit. Cape.

Et semble que en touts Cases l'on terre est seise en mains le Roy per le Vic' que le Vic' serra charge del Issues & Profits del ceo, de le temps que le terre fuit issint seisie & q. il accompt. de ceo in le Exchequer sc. del Issues trove sur le Default, tanque judgement pur le demandant, f. 345. *vide* Fitz. Disc. 46. & N. br. 51. *mes vide* hic cap. 62. *Que sur Grand Cape, nient obstant ceux parols cape in manum nostram, &c. le Vic' ne poet seiser le terre in mains le Roy, &c.* Vide N. Br. 51.

And yet as in personal actions, the Process of Distringas is but for the taking of Pledges of the Defendant for appearance: See the Process by Cape in Real Actions, is but for seising of the Land for the same purpose.

What is contained under the name of Issues. See more hic postea. Return of Issues, cap. 89.

How much the Sheriff must Retorn in Issues upon the Defendant, &c. Ibidem.

What Issues he must Retorn upon Jurors, ibidem.

The Sheriff shall levy no Issues without warrant: ibidem.

Issues forfeited, and upon whom, and what Lands they shall be levied, &c. ibidem & hic postea tit. Forfeiture.

If the Sheriff shall Retorn a Juror, in Issues, which is not sufficient, he is punishable, ibidem.

So if the Sheriff shall Retorn any Issues upon any Juror, or Hundredor, which was not lawfully Summoned, &c. ibidem.

Sometimes also there be Issues set by the Court, as an Amerciament, Forfeiture, or punishment for default of appearance of Jurors: Vide Br. Amerc. 35. Fitz. Essoine 123. & Assise 65. Br. Amercement 55. & 60. & Jurors 15. 18. 25. & 33.

No Officer or other person shall collect or levy any Issues Estreated, but only of the right person charged with the payment of the said Issues, &c. 27 Eliz. cap. 7. hic cap. 85.

If the Sheriff shall Retorne the Issues of any Recognisor, Pledge, or Mainpernor, which at the time of the Retorne, was not sufficient to answer the said Issues and Amerciaments, the Sheriff himself shall answer, and shall be therewith charged in the Exchequer, 27 Edw. 1. P. Sheriffs 19. 27 Ed. 1. c. 2.

Issues de terres. *Apres mors del tenant le Roy in Capite, le Roy avera primer seisin,* &c. *les Issues de touts ses terres, &c.* vide Stat. 17 Ed. 2. c. 3. & Co. 8. 172. & 9. 132.

De quel temps Roy avera les Issues del terres le heir son tenant, vide Co. 4. 59. 126. & 8. 170.

De quel temps Roy avera les Issues del terre son tenant, que alien sans licence, &c. vide hic tit. Fines. Co. 8. 170. Stamf. de Prerog. 84.

Cestuy que happa Livery extra manus Regis, *que ne doit aver Livery, il respondera les Issues al Roy arere,* vide Fitz. N. B. & Br. Issues 19.

Quant le Roy seisie per reason de Eigne droit ou title, la Roy serra respond' des Issues, del temps de son title & interest primes accrue, &c. see Fitz. Gard. 1. & Judgement 69. Stamf. 84. Co 8. 170. *Come ou le Roy enter pre Condition enfreint, ou pre Mortmain, &c.*

Mes quant le Roy e intitle, ou seise ascun ters, Nomine districtionis come in case de Alienac' sans licence pur terre in capite, ou de marriage sans Licence: Ou jure Protectionis come in case de Ideocy la le Roy poet respond' del Issues, a le temps de son title trova per Office, &c. Co. 8. 170. Stamf. 84. *Auxi quant home tient del Roy in Chivalry, & son Homage ou son Relief soit arere, & Distress issera hors del Excheq*uer *ad respond' nobis de replevio, vel ad faciendum Homagium, &c. en cel Distr. il perdera Issues, &c.*

Issues de terres de felons, fugitives, & utlawes, see hic fol.

Tenant le Roy devy seisie, & estraunger abate in part des tenements del heir, le abator serra charge ove les Issues del ceo, & nemy le heir, Br. Issues 20.

Ou le Roy est d'estre respond' del mesne Issues & Profits, Prises d'ascun ters, queux ont deveigne almains de divers persons, puis le title le Roy primes a ceo accrue, la chescun de eux que ont severalment prise les profits, respond' pur son temps; mes un ne respond' pur tout. Fitz. Forfeit. 18. & Stamf. de Prerog. 84.

Ou pardon de intrusion excuser Issues, & ou nemy. Vide Br. Intrusion 21.

But the Sheriff (or other Officer) ought not, at this day, to seize any Lands into the Kings hands, until after office found, &c. See hic cap. 7. Co. 8. 169.

Mean rates. By the Statute made 28 E. 3. c. 4. it is Ordained, That of Mannors, Cities, Boroughs, Towns, Hundreds, Franchises, and all other Lands and Tenements whereof profit doth arise from time to time through the year (as of Mills, Herbage, Toll, and Profits of Courts) every Officer which shall seize such Lands and Tenements to the Kings Use, 28 Ed. 3.

Use, and after shall make Livery thereof to the Heir (by the Kings Commandment out of the Chancery) yet they shall be bound to answer to the King for the rate and portion of the time, according to the old
Plus hic c.14. course of the Exchequer.

Mes mesme le Stat. done les Rents al eux que sue Livery, quant le Rent, jour vient coment que ceo veigne le prochein jour apres lour livery sue. Stamf. de Prerog. 80.

CAP. 12.

Amerciaments.

THe Sheriff is also accomptable to the King for, and upon Process, &c. is to gather up, and to bring into the Kings Exchequer, all Amerciaments and Fines which shall be set or assessed (as a penalty) upon the heads of offendors against the King, in any of his Courts. Plus hic c. 14.

An Amerciament is properly a penalty Assessed upon an Offendor by his equals, or by the Country.

And this word Amerciament, is called in Latin Misericordia, and in English, Mercy; so as by the name and nature of this word, a man is not to be punished so much as he or his offence deserveth, but that the Amerciament ought to be less than the offence; for it cannot be properly said, that a man hath mercy shewed to him, if he shall pay or be charged at more than his offence deserveth; and this is by the Common Law, which is a Law of mercy, and by the Law of reason, a principal ground of our Common Law. *Amerciament.*

Co. 8. 59. b
Fi.z. 75. h. k.

And hereupon also it is, where two or more are to be amerced, though one joint offence, yet their amerciaments shall be several, for that one of them shall not be charged or amerced for the offence or default of the other, but that they shall be all equally amerced and charged, Fitz. 75. g. h. k.

Vide Co. 8. 39. b. & 11. 43. b.

And if there be divers demandants amerced in a plea real, for their nonsuit, the course of the Court of Common Pleas is to make the Estreats of the amerciaments, severally upon them, and to deliver the same Estreats to the Cerks of the Assizes, who delivers them to the Coroners, and they use to Affeire the amerciaments (sc. to assess the sums upon every one) severally, Fitz. 75. k. 76. a.

And so they use to do where there are divers defendants amerced, Fitz. 75. i.

And those Estreats do rehearse and shew the cause of the amerciaments, &c.

By the Statutes of Magna Charta, cap. 14. & Westminster 1. c. 61. Amerciaments ought to be assessed, (taxed, moderated, or affeired) *per Pais*, sc. per Pares, by the oaths of good and lawful men of the same Vicenage or County. See Co. L. 126. *Amerciaments.*

9 H. 3. 14.
3 E. 1. 6.
Co. 8. 39. b. 40.

But

But these Statutes are not to be intended of fines assessed by the Court upon any offendors for any contempt, &c. Nor to any issues retorned upon any man, for any default of appearance.

But they are to be understood of Amerciaments upon the Plaintiff or Demandant, or upon the Tenant or Defendant in actions real or personal, (as if the Plaintiff or Demandant be nonsuit; or if Judgement be given against the Tenant or Defendant, or upon the Plaintiff, Quia non est prosecutus, or pro falso Clamore, or the like) or upon the Mainpernors, for that the principal party doth not appear, &c. in such cases the Justices never assess any Amerciament, but by the former Statutes the Amerciaments ought to be assessed per Pares; And the Court in such cases enters, Ideo in misericordia, generally, without taxing or assessing any sum in certain. Vide Co. L. 126. 127.

And then the Clerk of the Warrants in the Common Place, doth make Estreats of these Amerciaments, and delivers them to the Clerk of the Assises within every circuit, to deliver unto the Coroners in every County to affeire, id est, to assess the Amerciaments, ut supra.

And so for amerciaments upon Inditements or Presentments, for not repairing of a bridge, or high-way, or the like; such amerciaments ought to be assessed per Pares, &c.

But amerciaments of every Officer or Minister of Justice, must be assessed by the Justices of the Court where the cause depends: and this is called an amerciament Royal, as where the Sheriff, Coroner, or other Officer of the King is amerced by the Justices for any his abuse or misdemeaning in his Office: vide Co. 8. 40. Br. Amerce. 25. 33. & 50. & *Termes del Ley*. 2 H. 7. 7. a. Fitz. grant 33.

Sur erronious judgement done en Court baron, brief de faux judgement fuit port en le Court de Common Pleas, lou le suitors fuer amerce, pur ceo que ils sont Judges la, & le amerciaments de les Suitors fuit assess per les Justices. Fitz. Amerce. 19. & liber. Intrac. tit. Faux Judgement div. 13. 14.

Queux persons serront amerce, queux nemy.

- *Peeres del Realm, & Evesques poient estre amerce.* Co. 8. 39. 40. Br. Amercement 2. 23, 47, & 48. & Mag. Chart. c. 14.
- *Mes peeres del Realm serra amerce per Pares, sc. per les Barons del Eschequer, ou per les Justices del Banco Regis, ou del Common Bank, lou ils sont Nonsue.* Mag. Chart. c. 14.
- *Touts Ecclesiastical persons poient estre amerce* (ibid.) *& tiel amercement serra nient aiant regard a lour lay fee, ne a lour benefices, mes solonque le trespass.*
- *Feme covert serra amerce.* Br. 9. Fitz. Amercement 14.
- *Mes Enfant ne serra amerce, pur imbecillity del Age, mes l'entre est,* Ideo in misericordia, sed perdonatur quia Enfans. Co. 8. 61. Br. 43. Fitz. Amercement 10. & 14. vide Co. L. 126. 127.

Jurors

Jurors serra amerce, &c. Br. 30. 46. 55. 60. 68. & Co. 8. 41. & 11. 43.

Plaintife ou demandant serra amerce in divers Cases, & pur divers causes: vide Co. 8. 60. 61. & Br. 3. 6. 7. 11. 27. & 31. & hic antea.

Defendants ou tenant serra amerce in divers cases; Co. 8. 61. Br. amercement 6. 8. & hic supra.

Ou Pledges ne serront Amerce, come le plaint soit Nonsuit; *Et ou les pledges serra amerce.* Co. 8. 61.

Ou Mainpernors serra amerce, & ou nemy. Co. 8. 39.

Enquest serra amerce pur concealment. Stat. 3 H. 7. c. 1.

Home Summon al Parliament, que absent luy mesme, serra amerce, 5 R. 2. c. 4.

Signior que distrein son tenant per un service nient due, serra amerce, 52 H. 3. c. 3.

Cestuy que prist outragious distress, serra amerce. 52 H. 3. c. 4. hic cap. 115.

Queux persons serront amerce, queux nemy.

Cestuy que attache, ou arrest ascun deins son liberty (que ne tein de luy) de respond' sur contract, ou trespass, &c. fait hors de lour Jurisdiction, serra amerce, 3 E. 1. c. 34.

Cestuy que approve Common, & ne leave sufficient al Commoners serra amerce, 20 H. 3. c. 4.

Bakers & Brewers que ne observe l'Assise serra amerce. 51 H. 3.

Cestuy que Eme, ou vend, per measures nient signe, &c. serra amerce. 51 H. 3.

Cestuy que deforce, &c. feme de sa Dower serra amerce. 20 H. 3. c. 1. & 13 E. 1. c. 4.

Un ville, Hundred, ou County, serra amerce per escape de felon. 3 E. 1. c. 1. & 13 E. 1. c. 4.

Co. 11. 43. 3. 7. c. 1.

Nota que amercements, & Fines in ascun Cases serra impose sur divers jointment: sc. *ascun foits sur un entier County*, *ascun foits sur un Hundred*; *& ascun foits sur un ville, &c. Come pur Escape dun Murderer, &c. mes ceo est pur le incerteinty des persons, & pur infinitenes del number.* Vide Fitz. Coron. 290. 304. 316.

Auxi le plaintife in ascun cases, poest estre divers foits amercie: sc. *quant la est forsque un plaintife ou demandant, & divers defendants.* Co. 8. 61.

Mes nul serra Amerce, mes pur reasonable cause; *Et accordant al quantity de son offence.* 9 H. 3. c. 14. 3 E. 1. c. 6. P. Amerc' 1.

Quel

Quel serra charg' al Amercement.

In an Assise the Plaintiff was Nonsuit, when the Jury came to give up their verdict, and was amerced, &c. and by the opinion of Newton the land which the Plaintiff had the day when he found pledges, shall be chargeable to the Amerciament, but Wilby held otherwise: sc. that the land which he then had (when he was Nonsuite, or was amerced) or which the Plaintiff should afterwards have, was only chargeable: Quod Nota, that the land which the Plaintiff sold in the mean time between the Amerciament, and the pledges found, should be discharged: 22. Ass. p. 32. Br. Amercement 37. vide Co. L. 102. b. that the land only which the party had at the time of the Amerciament assessed, shall be charged; and that shall be charged into whose hands soever it shall come.

Vide hic postea (*Retourne de Issues sur Jurors*) *sur que tels Issues serra* *lev'*.

But Sheriffs shall not be charged with (nor accountable for) any other Amerciaments, Issues, or Fines, than those for which they shall have Estreats or Warrant, for to levy, under the Seal of the Exchequer. Neither are they to gather or levy any amerciaments, &c. until they have received such warrant. Vide Stat. 27 E. 1. c. 2. & 42 E. 3. c. 9. Cromp. 203. 204. & 211.

And yet the Estreats of the Justice of Peace is sufficient warrant to the Sheriff to levy such arising before them. See hic c. 122. & 90. Plus hic c. 14.

CAP. 13.

Fines.

This word Fines (or à fine) hath divers significations; As first, for an assurance or certainty of lands, &c. 2. A Fine is a punishment certain which groweth expresly from some Statute. But to the purpose in hand, a Fine is most commonly that which is assessed or set upon an offendor in some Court of Record by the Court or Judge there as a penalty for some contempt or offence, and which the offendor doth give for and in satisfaction of his offence, default, or contempt: See Co. 8. 38. 40. 41. & 60. & Co. L. 126. *Fines.*

Le difference per enter Amerciament, & tiel fine est, Que ceo que est assess. per le Court, sur vic' Coroner, ou Officer del Court, est appel Amerciament (nemy un fine) Mes sur estranger al Court pur misdemeanors est appel fine, & nemy Amerciament. Co. 8. 40.

Fines pur escape de felons, Such fines are uncertain, and to be assessed by the Justices. Vide hic c. 14.

Also

Also if any of the Kings tenants in Capite (be it in Knights service, or otherwise) do alien without the Kings licence, any part, they shall pay a Fine: 9 H. 3. 32. & 17 E. 2. 7. Stamf. de Prerog. folio 29. 30. And the Kings Officer may seise the land for the Fine, Fitz. 175. a.

Uncore per tiel alienation sans licence, le title del Roy Covient estre primerment trove per Office, ou auterment de appeare sur Record.

Et nota que si title le Roy appeare in ascun manner sur Record, il est cy bon, sicome ust estre trove per Office: Sicome si tent le Roy alien sans licence, quel alienation appearer per un fine levy, ou per un fait Inroll, ou auter matter de Record, in ceux Cases, si un auter Record serra trove, que prover ceux ters destre tenus del Roy in capite, sur ceux deux Records ensemble, Proces serra fait envers le party (per un Scire facias) *de vener & monstre pur que il ne payer ou ferra un fine al Roy pur le alienation.* 50. Ass. 2. Stamf. de Prerog. 55. 56.

And by the Statute made 2 & 3 E. 6. c. 34. it seemeth that Sheriffs shall be accountable for all Fines for Alienations and Intrusions made by the Kings tenants, &c. within their County (as well as for Fines imposed upon Offendors for contempts, &c.) and upon Proces may seise the lands for the Fine.

But for such Fines assessed or imposed upon offendors, as also for the profits of the lands forfeited to the King by his tenants in Capite, upon the alienation without the Kings licence, &c. the Sheriff is not chargeable; Nor is it safe for him to meddle to levy the same (notwithstanding any office, or other matter of Record, found thereof) until he hath received Proces or other Warrant under the Seal of the Exchequer, to levy the same; and then when he hath so levied them, he is chargeable and accountable for the same, and may seise the lands for the Fine.

Principium finium pro Alienatione, vide Br. Alienat' 6. & 19. & Co. 2. 80. & Stamf. de Prærog. tit. Aliena. sans licence & Co. L. 43. a. b.

Per le Common Ley, si cestuy que tient in Capite ust alien le Frank-tenement sans licence, le terre fuit forfeit. Mes ore le Stat. 1 E. 3. c. 12. *le Roy ne seisera le terre alien sans licence mes avera fine pur ceo.* Stamf. de Prerog. fol. 29. & Finch. fol. 41.

Pur queux Alienations sans licence, le tenant fera fine, & pur queux nemy. Vide Br. Alienation per totum. Fitz. 157. & Stamf. de Prerog. tit. Alienat. sans licence. *Fines pur Alienation.*

Auxi per le Stat. de 32 H. 8. 1. *fines pur Alienations serra pay sur common recovery, cibien come sur fine, ou feoffment.*

Et auxi serra pay sur Devise, ou done per volunt. Br. Aliena. 37. & Stamf. de Prerog. fol. 31.

Mes un Release, semble d'estre nul Alienation, & pur ceo nul fine est due al Roy sur ceo. Br. Aliena. 31.

Quantum serra pay al Roy, pur fine sur Alienation sans licence, &c. sc.

Le { *Fine de aver Licence de Alien terres tenus in Capite, nest forsque le tierce part del value (del terre) per an, le Tenth deduct.* West. 81.
Fine pur alination sans licence, est le value pur un an.
Fine pur intrusion, est le value del terre pur un an. Br. Alienation 29.

Sur touts licences de alien Spiritual terres (come Appropriations d'Esglises, &c.) le fine al Roy, est le value pur quatuor ans. West. 81.

Fine pur alien temporal terres in mortmain, est le value pur 5. *ans* ibid. *Mes per* Br. tit. Alienat' 29. le fine est forsque 3. ans value.

Et si, le Alienation sans licence soit trove per office le Roy avera les issues del terre à tempore Inquisitionis captæ, & non ante. Br. Alien 29. *le reason semble, pur ceo que icy, le Roy nest intitle forsque* nomine Districtionis.

Issint est lou le widdow le Tenant le Roy serra marie sans licence le Roy. Vide Stat. Mag. Chart. c. 7. & 17 E. 2. c. 4. Fit. Gard. 1. & Prerog. 27. Stamf. de Prerog. tit. Women. Fitz. 174. c.d.

Sur touts licence de marriage, del widdow le Roy, le fine est le 3. *part de le value de sa Dower, pur un An.* West. 81.

Sur touts Pardons de tiel widdows, que serra marry sans licence le Roy, le fine est tout le value de sa Dower pur un An. Ibid.

Et l'officer le Roy (sur brief a luy direct, poit in ceux cases seiser le terre pur le Fine, &c. Fitz. 174. c. 175. a. 225. b. & 226. c.) *Et tiel brief poit estre direct al Eschcator, ou al vic'* Fitz. 175. a.

Fines pur Contempts & Offences.

Fines pur contempts. *Ceux serra assesse & impose, in Court* (vide hic cap. 14.) *Et nul Court que nest de record imposer Fine.* Co. 8. 38. 60.

Et a chescun Fine, Imprisonment est incident, &c. sc. *quousque le Fine soit pay,* Co. 8. 59. & 11. 43.

In touts cases ou chose est probibite per ascun Stat. l'offend. serra fine. Co. 8. 60.

Sur chescun Inditement de maihem, ou auter trespass ou offence, si l'offend. soit de ceo attaint, il fera pur ceo un fine al Roy. Litt. 194.

In chescun plee de trespass, ou auter action, ou l'offence est lay d'estre vi & armis, le defend fera fine, si judgement soit done envers luy. Co. 8. 59.

Le Plaintiffe pur double vexation serra fine, come si un sue auter in deux Courts pur mesme le cause. Co. 8. 60.

Pur queux causes Fines serra impose, &c. Vide plus Co. 8. 3. 8. 59. 60. & 11. 43. Br. tit. *Fines pur contempts* per totum. Cromp. de pace. 159.

On

Ou le fine serra fait al value del terre del offendor Br. *Fine pur Cont'* 42. Fitz. Paine 2. 3.

Justices of Peace shall deliver to the Sheriff Estreats indented thereby to levy the Fines and Amerciaments assessed before them. Stat. 14 R. 2. 11.

All Fines, and Amerciaments, assessed or imposed by the Commissioners of Sewers, upon any offendor, shall be to the use and behoof of the King, by the Statute 23 Hen. 8. cap. 5. But since the Commission for Nort. and Suf. are excepted, by the Statute made 7 Jac. cap. 20.

And by the Statute 13 Eliz. cap. 9. The Clerk appointed for any Commission of Sewers, shall yearly Estreat all the Issues, Fines, Penalties, Forfeitures, and Amerciaments, that shall be answerable to the King, &c. And the same Estreats he shall yearly deliver into the Exchequer, &c. and from thence process shall go out to the Sheriff for the levying thereof.

Also the Kings Justices, the Steward of the Kings house, the Clerk of the Market, and the Aulnager, shall yearly deliver into the Exchequer their Estreats of Fines, and Amerciaments, &c. Vide Rastal. Estreats. div. 2. Co. 8. 61. Plus hic cap. 90. & 14.

CAP. 14.

Forfeitures.

Stat. 33 H. 8. 80. Vide Co. L. 13. The Sheriff, &c. ex officio may seise to the Kings use the profits of lands of persons attainted for treason or felony, &c. and also their goods, and is to account for the same in the Exchequer. Vide 22. ass. 96. Fitz. Coro. 308. 332. & 356. *Forfeiture.*

Co. 7. 34. b. Plo. 227. b. Now every offendor being lawfully attainted or convicted of high treason (by verdict, confession or utlary) shall forfeit to the King for ever all such lands, tenements and hereditaments, and annuities which he shall have in his own right, in use, or possession, of any estate of inheritance, at the time of such treason committed, or at any time after of whomsoever the lands are holden, 25 E. 3. c. 2. because it is a Royal escheat. 5 E. 6. c. 11. P. Forf. 2. Co. 3. 10. vide Stand. 187. 189. & Stat. 33 H. 8. c. 20. Stamf. 53. And his wife shall forfeit her dower. Co. L. 37. *Pro treason.*

And yet in divers cases of high treason there shall be no corruption of blood, nor any forfeiture of dower. See 5 Eliz. c. 1. 11. & 14. & 18. Eliz. cap. 1.

Also offendors convicted of high treason shall forfeit all their goods and chattels (to the King) as well real as personal, moveable and unmoveable, their corn growing, and all their debts due to them: i. all such goods, &c. as they shall have at the time of their attainder, but not those which the offendor had sold or given away before.

He which hath an estate in lands, &c. but for the terme of life or years, shall forfeit only his estate or terme.

Misprision. For misprision of treason the offendor shall forfeit to the King the profits of his lands, &c. during his life, and all his goods and chattels for ever. Stamf. 49

Præmunire. In case of Præmunire, the offendor shall forfeit all his fee-simple lands, &c. for ever; and the profits of his entailed lands, &c. during his life; and all his goods and chattels for ever. See my Countrey Justice.

Felony. For felony the King is not to have the escheat, except the lands be holden of him, but the words of the Statute de Prerog. Regis cap. 16. are, The King shall have the profits, (by the space of one year and a day) of the freehold lands, &c. of felons which they held of other Lords, and which be condemned, or which be fugitives; yea the King shall have the mean profits from the time of the felony committed, until an office found, &c. and the year and day next after. Vide Stamf. 49. a. Fitz. Coron. 290. & 49 E. 3. fol. 11. 17 E. 2. c. 16. P. Prærog. 17. 9 H. 3. 22.

And yet Mr. Fitz. saith, that the King is to have all the profits of their lands, for the year and day next after the attainder of the felon. Fitz. 144. k. And that if a stranger shall enter upon the lands, within the year and a day, that stranger who took such profits shall be therefore answerable to the King. Fitz. 144. k. vide hic cap. 7.

Mes quant al wast, & auxi al Ann. & Jour le Seignior de que les ters sont tenus poet esther pur vener al Roy, &c. & faire fine pur tout manner de wast, & forfeiture al Roy, & le fine est le greinder pur cel cause. Vide Stamf. 48. 49.

If the husband be attainted of felony, the King shall have the year day, and wast, of his wives lands. Fitz. Coron. 327.

A felon obtains his pardon, yet the King shall have Annum, diem, & vastum. Fitz. Coron. 308.

The King shall have Annum, diem, & vastum, of lands in Anc. Demesne Fitz. Cor. 310. *Vide plus ou Roy aver An. & wast.* Stamf. 49. 50.

If the felon held his fee-simple lands of the King immediately, and be attainted, the King shall have his lands for ever.

For pety treason, or felony, if the offendor hath but an estate tail in his lands (or but for life, dower, or courtesie) the King shall have the profits of the lands during such offendors life; of whomsoever the lands be holden.

In case of felony (be it in pety treason, or other felony) the lands purchased, or descended after the attainder shall be forfeited. 48 E. 3. 2. b. Finch. folio 71.

But

But in Cases of Heresie, Conjuration, Witchcraft, Sodomy, &c. there shall be no forfeiture of lands, &c. for that the offences be spiritual. 1 Jac. c. 12. Finch. 71.

Where the person attainted is seised in right of his wife, the King shall have the Issues, during the life of the husband. Fitz. Coron. 327.

And in these cases the King shall have the forfeiture of the lands, from the time of the offence. Finch. 206. 30 H. 6. 5. Da. v. 47.

Leases for life shall be forfeit to the King, upon an attainder for treason, or felony.

Co. 3. 10. Stamf. 188. a. Sometimes he that is attainted of high treason, pety treason, or felony, shall also forfeit such lands whereof he neither hath possession, reversion, or remainder, but only a title or right, or cause of action: As if a man be disseised of lands, and the disseisée committeth high treason, after an office found thereof, the King may seize those lands as forfeited and escheated to him: And if the disseisée be attainted of pety treason or felony, the King shall have the profits thereof by the space of a year and a day, and then the Lord of the Fee may enter, &c.

By the attainder of the husband for pety treason the wife shall be barred of her dower; but otherwise it is, where the husband is attainted of murder or other felony. Co. L. 73.

Stamf. 188. Also things in action, sc. debts due by Obligation, Statute, or Recognisance, and such like, are forfeited to the King by attainder or outlawry. Co. 3. 2, 3.

Ibid. Also debts due upon a simple contract, or without specialty, shall be forfeited to the King. Co. 4. 95.

For the goods and chattels of felons, it seemeth by Mr. Glanvile, that in his time, for theft only, the Sheriff should have had the felons goods which were forfeited, and that to his own use, and not to the Kings. Howbeit the Statute de Prærog. Regis cap. 16. gives now all felons goods to the King, without any exception (Stamf. de Prærog. folio 45.) the words of which Statute be thus. Rex Habebit Omnia Catalla Felonum, Dampnatorum, & Fugitivorum, &c. And under this word Catalla be comprehended Leases for term of years, the issues and profits of lands and tenements, corn growing, debts due by obligation, or upon account, goods wrongfully taken from the felon, and stollen goods, &c. Vide Stamf. ibid. & 188. b.

Felons condemned or attainted shall forfeit their goods, although they obtain their pardon; as where one kills another se defendendo, or by misadventure; Fitz. Coron. 116. 302.

Sometimes the King shall have the goods of felons although they be not attainted of the felony; As if a man be arrested for felony, and makes resistance, or flyeth, and so is killed, here he shall forfeit his goods. Fitz. Coron. 290. & 312. tamen vide Stat. 34 E. 3. cap. 12. & quære.

Also

Also felo de se shall forfeit his goods, and yet was never attainted.

He that killeth himself in his own defence; or by misadventure, shall forfeit his goods; but not his lands.

He that being pursued for felony, flyeth for it, forfeiteth his goods for flying, though he retorne and be tried, and found not guilty.

But note that always when any forfeiture is of any felons goods, it ought to appear of record. Co. 5. 110.

An obligation is made to two, or two be possessed of a horse. Ox, or other entire chattel personal, and the one of them is attainted, the King shall have the whole debt due upon the obligation, as also the horse, &c. for in such entire duties or chattels the King is to have no partner. Plo. 323. b 343. a.

If the wife killeth her husband, she thereby forfeiteth the goods of her husband. Fitz. Coron. 423.

And in these, and all other forfeitures, the Town is chargeable with the goods, and therefore they may seize them, wheresoever they be. 22. Ass. pl. 8. Finch. 207.

And yet if a distress be lawfully taken for rent reserved upon a Lease, or that goods be pawned, &c. if afterwards the owner of such distresses or goods be attainted of felony, the King shall not have the distress, nor the goods pawned, without paying or satisfying the party that distrained, or him to whom the goods were pawned. 13 R. 2. Br. Pledg. 31.

Outlawed. If a man be outlawed for treason or felony, he shall forfeit all his lands, &c. and all his goods. Fitz. Forfeiture 3. Br. 6. yea though he yields his body upon the exigent, yet he shall forfeit his goods.

Clerk convict. A Clerk convict (sc. who hath his Clergy given him before that judgment is given upon him for the felony) shall forfeit none of his goods. Fitz. Coron. 91. Br. Forfeiture 5. & 103. neither shall the King have the year and day, and wast of their lands, for that the offendor is not attainted: Fitz. Coron. 332. 393. Abr. d'Ass 79. but by others they shall forfeit their goods. Br. forf. 11. 65. & 113. Stamf. de Prerog. 46. Baron. 45.

A Clerk attaint (sc. who hath his Clergy given him after judgement) shall forfeit all his lands, goods and chattels. Br. forf. 65. & 103.

Tenants del Evesques. Also the King shall have the escheats of lands of the Freeholders of Archbishops and Bishops, when such tenants be attainted for felony in the time of vacation, whilst their temporalties are in the Kings hands, to give at his pleasure; 17 E. 2. c. 14.

This reacheth to no other escheats, but such as grow upon offences, and if the offence were done whilst the lands were in the Kings hands. although

although the party were not attainted thereof until such time as the lands be out of the Kings hands, yet the King shall have the eschcat by force of this Statute. Stamf. 41.

If any murderer or other felon shall escape, the Town or Country shall be amerced or fined therefore, by the Statutes, 3 E. 1. c. 9. & 3 H. 7. c. 1. sc. The Town where the murder or felony was done; and if the Town be not sufficient, then the amerciament shall be laid and levied upon the Hundred, and if the Hundred be not sufficient, then it shall be levied upon the County. Escape de felon.

But the Sheriff (nor any other) are not to take or levy any thing (sc. any fine, of any Town, nor of any Gaoler or other person) for the escape of any felon, before it be adjudged, or assessed by the Justices in Eyre, Stat. Westm. 1. c. 3.

And now that there be no Justices in Eyre, it shall be assessed by the Justices of the Kings Bench, or by the Justices of Gaol-delivery, or of Oyer and Terminer, or else by the Justices of Peace (sc. in Cases where the Justices of Peace have power to enquire thereof) Regist. folio 184. 21. ass. 12. 27. ass. 1. 2. 27. 1 R. 3. c. 3. & 19 H. 7. folio 10.

Nota quant escape est fait, si soit sur Record, les Judges sans pluis volent mitter le fine, mes si soit sorsque per matter en fait, donque le Jury doient trover & present ceo devant les Justices, & puis les Justices assessor ceo. Et a cel purpose touts Prisoners sont ou per matter de Record, ou per matter en fait: per matter de Record, quant un present in Court est commit al prison per le Court, la si le Gaoler ou Gardian n'ad luy semper prist, il est escape sans auter enquiry (sinon il ad reasonable excuse) & les Judges voile mitter le fine maintenant ut supra.

Per matter en fait lou home est prisoner, quant il est arrest per le vic. Bayliff, Constable ou auter, & escape, la il ne respond. al escape, devant que le escape soit present devant les Justices, &c. ut super.

Et in ambideux ceux cases, soit l'escape sur Record, ou per matter en fait, les fines assess per les Justices, serra estreat per ceux in Leschequer, & sur ceo procés issuer al vic. de levier ceo.

Si le vic. pur escape de felon prist ou levy ascun chose, devant que l'escape soit adjudge & assesse ut super, il payer al party tant que il aver Prise, & auxi al Roy, Westm. 1. c. 3.

Before this Statute, if there had béen any such escape, the Sheriff himself would assess the fines, which many times were unreasonable, and therefore this Statute of Westm. 1. was made, ordaining that such fines should be adjudged by the Justices as aforesaid.

A man arrested for a Trespass, escapeth, or is rescued by a stranger, these are finable, &c. Stamf. 31. e. Stamf. 150. e.

If a man stands mute in an appeal, or upon an inditement of felony, he shall forfeit his goods. Br. forf. 11. Plo. 262. But he shall forfeit no lands, except his offence be Treason. Bacon v. 45. Mut.

So if a man that is arraigned for felony shall challenge above 35. without cause. Plo. 262. Stamf. de Prerog. fol. 46. saith, If he challenge above the number of two Enquests.

So if a man be found guilty of felony, and then hath his Clergy: and in these three former cases the Offendor shall forfeit his goods, but no lands, except the offence be Treason; for that they refuse the trial or judgment of the Law: See Plo. 262. b, & Co. L. 391.

Si Sacerdos vel Rector fecerit feloniam, *il forfeitera touts ses biens, & dismes receives*, nisi fuerint in Sanctuario. Fitz. Coron. 245. & 413. 8 Ed. 2. & 22 Ed. 3. Stamf. 188. g.

Sacerdos. *Si Parson soit utlage, ou autrement ad forfeit ses biens, l'officer poet seiser ses biens, & a cel purpose l'officer poit entr sur les possessions Ecclesiastical de tiel Parson, ou in le Esglise ou Sanctuary.* 27. Ass. Pl. 66.

Prist Sanct. If a man flies to the Church for felony, his goods are forfeited presently, and the profits of his lands: and if he abjures before the Coronor for felony, he shall forfeit his lands and goods: Br. forf. 116. 121. *Abjure.* Stamf. 120. a. 123. a. otherwise, where a man abjures for a trespass or other offence, not being felony. Stamf. 123. a.

Heresie. If a man abjures for Heresie, he shall not forfeit his goods: but if he be convict and delivered to the lay power, &c. he shall forfeit his goods, but he shall forfeit no lands, except he be put to execution. Quære of this last, for by the Common Law there was no such forfeiture of lands; and the Statute of 2 H. 5. c. 7. which gave the forfeiture of lands in case of Heresie, is now repealed by the Statute of 1 Ed. 6. c. 12. & 1 Eliz. c. 1. Vide Finch. fol. 71. Doctor & Stat. fol. 115.

Recogn. Fines. Amerciaments. Also the King shall have all amerciaments, fines, issues, and all forfeitures of Recognisances lost or forfeited, &c. before any of his Judges, or Justices in any of their Courts or Sessions; but these must be first estreated into the Exchequer, and from thence process must be awarded to the Sheriff to levy the same to the Kings use, &c.

Also the Courts of Exchequer, of Wards and of the Duchy have authority to set amerciaments, fines, and penalties upon parties, officers, and other persons, for their defaults, contempts, negligences, or misdemeanors; as also to take Recognisances for the King, &c. All which amerciaments, fines, penalties, and forfeitures of such Recognisances shall be to the King, &c. 33 H. 8. c. 39.

Also the King shall have all amerciaments, fines, forfeitures and issues forfeited in any of the Sheriffs Courts, &c. in their Tornes, County Courts, or Hundreds within the twelve Shires of Wales, and the Sheriffs of Wales shall account for the same. 34 H. 8. p. Wales 43.

But otherwise it is of other Sheriffs within England: See 6 H. 7. fol. 2. 3. & hic tit. Sheriffs Fees.

Goods attached. Goods attached by the Sheriff, &c. if the party so attached (by his goods) appear not at his day, &c. the goods attached are forfeit to the King, and the Sheriff shall be answerable for the value thereof: See hic tit. Attachment. Br. forf. 3. 4.

Issues

Issues returned upon Jurors (they making default of appearance, &c.) shall be lost and forfeited to the King, and Levied by the Sheriff to the Kings use, upon estreats thereof made out of the Exchequer, &c.

And so of Issues returned upon the Defendant.

The pety Jury attainted in a Writ of attaint, shall forfeit to the King all their goods, and the profits of their Lands during their lives, or until they have made a Fine with the King: Br. attaint. 99. Fitz. 396. Nat. brev. 113. where also you may see the whole Judgment given against such offenders. *Attaint.*

If any person shall strike, or but draw any weapon to strike any Justice sitting in place of Judgment; Or to strike any Juror or other person in the presence of the said Justices, or shall make any Affray in their presence, such offenders shall forfeit to the King all his goods, and the profits of his Lands, during his life: So it is of any person which shall rescue any such offender. Vide Fitz. Judgment, 174. & Stamf. *Affray.*

If any person shall strike another in Westminster-Hall, sitting in of the Kings Courts, there, he shall forfeit to the King his goods for ever, and the profits of his Lands, during his life, Fitz. Cor. 280. Dyer 188.

If any person shall ride, or go armed offensively in affray of the Kings people, the Sheriff may seize and take away their armour and weapons, and appraise them, and shall answer them to the King as goods forfeited to him: See my Country Justice, tit. Armour. *Armour.*

If any person shall wear any privy armour in the Kings Palace, or in Westminster-Hall, he shall forfeit his armour to the King: Fitz. Forf. 22.

Note, that Goods and Chattels shall be forfeited in divers Cases, as

1. In Treason,
2. In Felony,
3. In Premunire,

} the party being Attainted by { Judgment of Death given upon him, or Out-Lawry.

4. In killing himself.
5. For flying for Felony, although not guilty of the Fact.
6. For standing Mute, or refusing to be tried by the Country.
7. By Conviction of Felony, &c. by Verdict without Judgment.
8. For Pety Larceny.

In Cases of Out-Lawry.

9. For going beyond the Sea without Licence.
10. For challenging above two Enquests, upon Arraignment for Felony.
11. For Abjuration for Felony.
12. For Heresie, if he be Convict and delivered to the Lay-power.
13. Goods Attached, if the party Attached appeareth not at his day, &c.
14. The Petty Jury Attainted in a Writ of Attaint.
15. Striking, &c. of a Judge, or Juror, in the presence of the Judge.

16. Armour worn offensively.

Regules. *Nota que home ne forfeitera asun terres que il ad en auter droit, come en droit sa feme, ou en droit sa Esglise, mes solement les terres que il ad en son droit demesne.* Stamf. 187. b.

Home endite de felony, ad feme inheretrix, le Roy avera les issues del terre le feme, &c. Issint si le baron est fugitive Roy, avera l'issues, tanque le baron soit mort ou attaint. Vide Fitz. Cor. 332. 356. Fitz. forf. 16. & Coron. 39.

Home occist auter, & obtaine Pardon, & uncore ses biens fueront seisies come forfeit al Roy, & auxy l'an jour & wast in ses terres, & le vic' fuit charge de tout. Fit. Coro. 308.

Home ad Jewel in gage pour x. li. & cestuy que mitter ceo in gage est attaint, le Roy navera le Jewel sans paier le x. li. car prerogative le Roy ne voiet prejudicer auter, Plow. 487.

Et issint est de distresse prise, &c. Plow. 487. b.

Auxi le vic. est chargeable ove les biens del felon, hic cap. 6. & Stamf. ibid.

Seize felons goods. Note, that after a man is Indited of Felony (by the Statute made Anno 25 E. 3. cap. 14.) a Capias shall go out to the Sheriff, commanding him to attach the body of the Felon: And if the Sheriff return in the said Writ, that the body is not found, another Writ of Capias shall be incontinently made returnable at three weeks after, and in the same Writ it shall be comprised that the Sheriff shall seize his goods, and safely keep them till the day of the Writ returned: and if the Sheriff return that the body is not found, and the Inditee cometh not in, the Exigent shall be awarded, and the goods shall be forfeit: But if he come and yield himself, or be taken by the Sheriff (or other Minister) before the return of the second Capias, then the Goods and Chattels of the Inditee shall be saved. 25 E. 3.

By the Statute made Anno 1 R. 3. no Sheriff (or other Officer) ought to take or seize the goods of any person, arrested, imprisoned, or indited for Felony, or for suspition thereof, before the same person be duly convicted or attainted of the same Felony (sc. either by Trial, Confession, or Outlary and Judgment thereupon given;) or that the same goods be otherwise lawfully forfeited, upon pain to forfeit the double value of those goods so taken to the party grieved. 1 R. 3. c. 3. P. Sher. 24. Br. forf. 40.

Howbeit this Statute extendeth not to any other, but to such as be in prison: Also this Statute extendeth not to Lands, but only to goods. Stamf. de prerog. fol. 48.

Mr. Bracton, lib. 3. tit. de Coron. saith thus, Prisones imprisonati antequam convicti fuerint, de terris suis disseisiri non debent, nec de rebus suis quibuscunque spoliari, sed dum fuerint in prisona debent de proprio suo in omnibus sustentari, donec per Judicium deliberati fuerint, vel Condemnati.

And in another place of the same Book, cap. 18. he saith thus, Qui pro Crimine vel Felonia magna (sicut pro morte hominis) captus fuerit & imprisonatus, vel sub custodia detentus, non debet spoliari de bonis

bonis suis, nec de terris suis disseisiri, sed debet inde sustentari donec de Crimine sibi imposito se defenderit, vel Convictus fuerit; quia ante convictionem nihil forisfacit, &c.

And yet lest the goods should be disorderly wasted, imbezelled, or sold away, the Sheriff, &c. (before the attainder of the Felon, so soon as he is taken) may take Sureties that the goods be not imbezelled, &c.
43 E. 3. 21. (sc. may cause the Owner, or some of his Friends to find Surety;
Br. fort. 7. 10. 44. and for want of Sureties, the Sheriff, or other his Officers may seize them, and cause them to be praised and valued, and then may
Stamf. de Prerog. 4[illegible]. deliver them to the Town (sc. to some of the neighbours of the Town
Ea. v. 48. where the goods were) by them safely to be kept, until the offendor be convicted or acquitted. And by the opinion of Mr. Brook, tit. Fort 44. this Order ought to be observed concerning the goods of every one
Plo [illegible]. which committeth Felony, until he be attainted: But yet the Felon must have reasonable maintenance out of his goods for himself and his family, in the mean time: And according hereunto there is a Writ in the Register to be directed to the Sheriff, videlicet, Quod tenementa & bona taliter capta, videantur & imbrevientur, & salvo custodiantur per ballivum ipsius capti, qui securitatem Regi invenit ei respondendi, &c. (Salvis inde ipsi capto & familiæ suæ, necessariis quamdiu fuerit in prisona.) So that the Felon must have maintenance of his goods for him and his family, until he be convict, and then that which doth remain shall be to the King. Bracton, lib [illegible]. cap. 18. & Stamf. de Prerog. fol. 48. a. De illis autem qui in fuga sunt, aliter erit. Bracton, ibidem.

So then this difference is to be observed in the seizing of a Felons goods, viz. where the goods be forfeited before the Felony tried (as where one is found guilty before the Coroner of the death of another; or where it is found before the Coroner that one did fly for a felony) in such cases the goods shall be presently seised upon the forfeiture of them, though there be no conviction of the Felon, and upon such forfeiture the goods are presently the Kings, and the Felon is to have no maintenance out of them, &c.

But upon an Indictment, &c. where the goods be not forfeited until the Felony tried, then they shall not be seized, or removed out of his house until the Felon be convicted, but yet there the Sheriff, &c. may take Sureties that the goods be not imbezelled or disorderly wasted, as aforesaid, and for want of Sureties may deliver them to the Town, &c. And note that if goods so delivered to the Town, be impaired in their custody, the Sheriff shall be charged to levy of the same Town the value of the loss, &c. (as it seemeth) F. Coron. 555.

And Mr. Stamford giveth it for a general Rule, that the Township where the goods of Felons or Fugitives be found, shall always make answer to the King of them. Stamf. de Prerog. 47.

If one be indited super visum corporis, of the death of a man, before the Coroner, all his goods are forfeit presently, although he shall be acquitted after (otherwise where one is indited before other Justices) vide Abr. d'Ass. 71. And yet by others, there is no forfeiture without the flying be found. Vide Fitz. Forf. 32. & Stamf. de prerog. 4[illegible].

Where one is found guilty of Homicide before the Coroner, the Coroner may seize the goods, and deliver them to the Town, &c. But upon a fugam fecit found before the Coroner, the Sheriff may seize the goods, and deliver them to the Town, &c. Now we call that a fugam fecit, where any fly for fear, when any Treason, or Felony is committed by any. Finch.

Fugitives. Yea if a man shall fly for felony, the Sheriff, &c. is to seise all his goods and chattels, real and personal, as also the profits of his Lands to the Kings Use.

And the Sheriff may retain such Goods and Chattels, and the Issues and profits of such Lands, to the Kings Use, until such time as the Fugitive shall be attainted or acquitted; for that such his flying maketh a great presumption against him. Stamf. de prerog. 45. 46. vide Fitz. Coron. 289. 290. & 366. & Fitz. Forf. 32.

He that flyeth for Pety Larceny, shall forfeit his goods. Fitz. Coron. 406. tamen vide Stamf. 47. & Quære.

An Accessary before the Felony committed, shall forfeit his goods, upon a fugam fecit found, &c. But otherwise of an Accessary after the Felony committed. 4 H 7. fol. 18. Br. Coron. 199. & Forfeitor. 52.

But yet the goods, &c. of a Fugitive, are not forfeit until the flying for Felony be lawfully found of Record; either before the Coroner upon an inditement, super visum corporis, in case of the death of a man; or by verdict upon his acquittal (for although he be found Not guilty upon his Trial, yet he shall forfeit his goods for his flying: Quia fatetur facinus, qui judicium fugit, and the Law will admit no proof against this presumption:) And although the Jury which tries him, shall find him Not guilty, and further that he did not fly: yet the goods are forfeit by force of the finding of his flying before the Coroner. Vide Stamf. de prerog. 46. & Fitz. Forfeitor. 29. & 35. Co. 5. 109. Plo. 26. 2. Co. L. 373.

And if a Felon be arrested for any manner of Felony, and as he is leading to a Justice of Peace to be examined, or towards the Gaol, he flyeth, and those which pursue him cannot take him again without killing of him, by reason whereof they do kill him; if all this matter, and the flying be presented before the Coroner, or before any other who hath authority to inquire of felonies, the party so slain shall forfeit all his goods and chattels: sc. all such as he had at the time of the felony committed: Fitz. Coron. 290. Co. 5. 109.

Fugitives.

And in these and other like cases presently after the flying found by Enquest before the Coroner, the Sheriff is to seize all the goods, and the profits of the lands of such offendors. See Fitz. Forf. 32. & Stamf. 47. b.

Goods. And the custody of the goods of those which be convicted of felony, or which be fugitives, after they be forfeited, doth belong to the Town where those goods are, or where the Felon doth dwell: and therefore upon a Fugam fecit presented before the Coroner, the goods ought presently to be seized by the Sheriff or his Officers, and praised by an enquest, and the Sheriff shall cause the appraisement to be inrolled in the Coroners roll, and the goods shall be delivered to the Town to answer Stamf. de Prerog. 47.

answer to the King for them: And though the goods be not delivered to the Town, yet if the goods were in the felons house or possession at the time of his conviction or flying, the Town shall answer for them: Fitz. Coron. 366. Stamf. 192.

Note that under this word goods (Catalla) be comprehended Leases for years; Lands extended for debt upon judgment given in any Court of Record, or upon any Statute Merchant or Staple, Recog. or Elegit; The wardship of body and lands; the issues of lands and tenements; Corn growing; debts due by Obligation, Statutes, or Recog. or due upon an account, or upon a simple contract; yea goods stoln, and goods wrongfully taken from the felon.

[Fitz. Coron. 390. Stamf. 194.] But for the issues and profits of Felons and Fugitives lands, the Sheriff is, and was always chargeable therewith according to the extent thereof, and not any Town: And the Sheriff (presently after a Fugam fecit found before the Coroners) shall seise them into the Kings hands by word only, without taking any enquest. Stamf. de Prærog. 47. *Lands.*

Also he that flyeth for felony, shall not forfeit the goods or profits of his lands, which he had at the time of the felony or flying; but those and such only which he had at the time of the inditement or acquital: Co. 5. 109. Fitz. Coron. 296. & 344.

[Co. 5. 110. & 111.] If process be awarded upon an appeal or inditement of felony against any person who doth absent himself and not appear, until the Exigent shall be awarded against him, by this absenting himself (which in Law is a flying) he shall forfeit all his goods, which he had at the time of the Exigent awarded, although he yield himself upon the Exigent, and that after he be acquit of the felony: but if he were in prison, or beyond the Sea, &c. at the time of the Exigent awarded, then he shall not forfeit his goods, &c. See Fitz. Fort. 19. & 31. [See postea, utlaw.]

Note that he that is outlawed for treason or felony, shall forfeit those goods which he had at the time of the Exigent awarded, and not such as he had before, and hath aliened.

Note also a difference touching the profits of the lands of fugitives: sc. where the flying is presented before the Coroner, and where the flying is found by verdict upon an acquital; for upon a flying presented before the Coroner, the offendor shall forfeit the profits of his lands until his death, or until he be acquit, or until he hath purchased the Kings pardon: But upon a flying found by verdict upon acquital, he shall forfeit no profits or issues of his lands, for by his acquital his lands are discharged, and consequently the profits thereof: Fitz. Co. 344.

Where one which passeth out of the Realm without the Kings licence, or contrary to the Kings Proclamation, or having licence, shall not retorn upon the Kings command, &c. he shall forfeit his lands and goods, vide Fitz. 85. a. c. & Dyer 128.

If a man shall kill himself, he shall forfeit to the King all his goods *Felo de se.* and chattels, real and personal, and his debts, &c. And the Sheriff and his Officers are to seize them to the Kings use, but he shall not forfeit

forfeit his lands. Plo. 258. And this forfeiture shall have Relation to the time of the Act done in his life time, which was the cause of his death. Finch. 75.

If an infant, a man non compos mentis, or a lunatick killeth himself, they shall forfeit nothing: See more in my Country Justice, tit. Felo de se.

CAP. 15.

There be other kinds of Forfeitures of Goods to the King, as *bona wayviata*, Estrays, *bona Confiscata*, *Deodanda*, &c.

Bona waivata. Bona waiviata, or derelicta, are where a felon hath stoln goods, and upon Hue and cry, or other pursuit after him, he waiveth the goods; or where a felon for fear to be apprehended (thinking that pursuit is made after him, or otherwise to ease himself of his carriage) he having the goods with him in his possession, flyeth and waiveth, casteth away, or goeth from the goods: In these cases the goods are forfeit to the King by the Common Law of this Realm: and the Sheriff, &c. is to seize them to the Kings use: yea any other officer, or person in the right of the King, and to the use of the King, may seize the goods so waived. Co. 5. 109.

And yet the party robbed, or owner of the goods, shall afterwards be restored to his goods again: sc. if he maketh fresh suit, and shall do all his endeavour to take the Thief, whether he be taken or no; and this is by the Common Law: or without fresh suit, &c. if he do cause the Felon to be thereof attainted, or that the party robbed shall but procure another to give evidence upon the inditement. Vide Finch. 75. &c. and this is by force of the Statute made 21 H. 8. cap. 11. Br. Estray 8. & 14.

But if the felon had not the goods with or about him when he fled (having peradventure hid them, or left them in his own house, or in the house of any other, or in the custody of any other, or left them within any mans Mannor, or put, hid, or bestowed them in the ground, or in any other secret place, and then was fled:) These goods are not forfeit, neither shall they be said to be waived goods in Law, but that the owner may take them again when he will, without either fresh suit made after the felon; or without causing him to be attainted, or other prosecuting of him (as it seemeth) and the Sheriff, nor any other Officer are not to seize or meddle with any such goods, &c. Co. Ibid.

Note that there can be no waife (properly) but of goods that were stoln: and yet if upon Hue and cry levied, a man that hath committed no felony, doth leave his own goods and flyeth, those goods (by some opinions) may be seized to the Kings use far a waife. See 29 E. 3. fol. 29. And so seems the opinion of Laicon in 12 E. 4. fol. 5. But by the opinion of Nedh. in 12 Ed. 4. and of Master Brook, tit. Estray 2. (agreeing Stamf. 186.

(agreeing with the opinion of Sir Edward Coke, here before) a waife is only that which is stoln, and after waived and left in flying, and Catalla felonum, are the proper goods of the felon, and the one may be seized and forfeited by the flying, but not the other: Br. Estray 2. 6. but a man waiving his own goods, they are not forfeit, but that he may have and take them again when he will.

Home poet prescribe d'aver waiffe, mes nemy in Catalla felonum. Br. Estray 2. 6. & Co. 9. 27. Regist.

Biens sont emblees & waiffe, uncore cesty a que le property fuit, poet eux reseiser 20. *ans apres, si nul officer le Roy, ou d'auter Seignior, &c. ad eux seisie,* Fitz. Estray 2.

Uncore per Gerrard & Catlin, ils sont forfeit al Roy per le waiver tantum sans seiser. Vide Dyer 338.

13 E. 4. 10. *Si Merchant Alien vient in cest realme per safe conduct, & ses biens sont emblees, ceux biens ne poent estre waifes, car le Roy ad grant a luy* salvum & securum, &c. tam in bonis quam in corpore, *& cest un covenant perenter le Roy & luy, per que le Roy ne poet aver les biens come waifes, & per mesme le reason le Roy ne poet granter eux al auter person, &c.* Fitz. Estray 1.

Bracton lib. 1. c. 12. These goods waived, the Civilians call derelicta: and Master Bracton saith, Quod olim fuerunt inventoris de jure naturali, & jam efficiuntur principis de jure gentium; and he reckoneth them inter res quæ sunt nullius, &c. as estraies, and the like.

But now Kings have granted this, and such like Prerogatives unto their Subjects within their liberties, so that Waifes and Estraies are (in many places) the Lords of the Franchise where they are found, but they must by him be caused to be cryed in Churches, and Markets near about him, or else the year and day doth not run to the prejudice of him that hath lost them.

Nota per le Common Ley Estray serra proclaime in deux prochein market Villes, & deux market jours, lun in lun ville, & lauter in lauter ville: Et sil sont claime deins l'an & jour, le owner reavera; & cesty que prist eux come estray poet eux retainer tanque il sont satisfie pur le finding, keeping, & proclaiming del beast, &c. See Br. Estray 1. 4. & 16. Fitz. Estray 4. & Co. 5. 108. Finch. 45. & Stat. 27 H. 8. c. 7. Estray

Et uncore semble que Estraies fuer anciently proclaime, cy bien en Esglises come en markets, sc. *un foits en le Esglise, & deux foits in markets.* Vide Britton, fol. 26. & 39 E. 3. fol. 3.

Estray ne poet estre in tiel lieu, ou le party ad common. Br. Estray 3. & Co. 7. 16.

Co. 5. 508. *Biens de Infants, feme covert, executrix, home in prison, & home ouster le meere, sils estreyont, & sont proclaime solonque le Ley, si nul claime eux deins le an & jour, ils touts serra lie, & tiel biens poient estre seise al oeps le Roy, &c.*

Estray est lou ascun beast ou cattell vient in ascun Seigniory, & nul conust le owner de ceo.

Et nota que waived biens & estraies serra seise per l'officer le Roy, al oeps le Roy; ou per l'officer ou bailife del Seignior, que ad tiels choses per grant le Roy, ou per prescription al oeps le Seignior: Termes del Ley.

One as Bayliff or servant to the Sheriff, seized a horse as an estray to the Kings use, and proclaimed him according to law, &c. and after the year and day sold him, and the Sheriff accounted therefore in the Exchequer. Br. Estray 4. & 5. 24 H. 6. fol. 5.

Swans may be seized as an Estray. 7 H. 6. Fitz. Barr. 6.

Swans that be unmarked and wild (being at large and abroad) the Sheriff may seize them to and for the use of the King, by his prerogative, they being volatilia regalia, Co. 7. 16.

Bona confiscata. The word Confiscate (confiscare, i. conferre in fiscum) cometh from fiscus, which (as Master Minsheu saith) originally signifieth a Hamper, &c. but Metonimically, the Emperors Treasure, because it was anciently kept in hampers; and such goods as were forfeited to the Emperors Treasure for any offence, were bona confiscata, and so do we call those goods that are forfeited to our Kings Exchequer. Hæc ille.

And indeed our Law in some cases doth intitle the King to goods that late were another persons, but lost by some default or negligence of his; yet this cannot properly be termed a forfeiture, but a confiscation of goods. As if a man do steal divers goods, and the owner of the goods doth bring his appeal of Robbery against the Felon, and therein doth omit or leave out any part of his said goods that were stoln; in this case the King shall have all those goods which were left out of the appeal; and the reason of law is, for that by this omission or leaving out any of the goods the felon may escape, and the appellant shall be thus punished by the loss of his goods, for such his negligence, connivancy, and concealing of the felons offence; and then in as much as the owner cannot have those goods, the King shall have them as confiscate, according to the old rule, quod non capit Christus, capit fiscus. *Termes del Ley.* Co. 5. 110. Fit. cor. 100.

So if a man be indicted for the felonious stealing of another mans goods; where in truth those goods be his own, and the goods be brought into the Court, and he is asked by the Court whose those goods be, and he doth disclaim to have any property in them; by this disclaimer he shall lose the goods, though they were his own; and though he be acquit of the felony, yet the goods by this disclaimer shall be confiscate to the King. Fitz. Coron. 355. & 368. *Termes del Ley.* Stamf. 194. and the Sheriff shall be charged with the same. Ibid.

So if goods be found in the possession of a felon which he doth disavow or disclaim to have any property therein, and after he is attainted

tainted for stealing of other goods, but not of those ; in this case the goods which he did disavow, shall be confiscate to the King : but if he had been attainted for the stealing of those goods, they should have been termed goods forfeit, and not confiscate. Fitz. Forf. 24. Finch. fol. 75.

And some do hold that all goods which are forfeited to the Kings Exchequer, be bona confiscata. Minsh.

Co. 5. 110. And if A. hath the goods of B. by bailment, or finding them, or by other lawful means, and B. doth bring an appeal of robbery against A. charging him to have stoln them, or taken them feloniously, and it is found by the Jury, that the goods were the plaintiffs, and yet that the defendant A. came to them lawfully, in this case B. the plaintiff shall lose these goods to the King, for his false and malitious appeal, scil. they shall be confiscate. *Faux appeal.*

If a man do steal goods at divers times from several men, and he is attainted at the suit of one of them for the goods stoln from him, but is not attainted at the suit of the others, by this attainder the felon shall forfeit to the King not only his own goods, but also the goods stoln from those other at whose suit he was not attainted, although he had no property, but only a possession of those goods, for a felon hath no property in goods stoln, but the property doth always remain in the right owner, which property in this case he also forfeiteth or loseth to the King, for default of pursuing the felon. *Par default de pursuit.*

So if a man do steal goods from another, and before his attainder he doth kill himself, he shall forfeit to the King not only his own goods, but also the goods which he hath stoln from the other : for the owner of those goods not having prosecuted and given evidence against the offendor to attaint him of felony (either by appeal, or indictment) can neither have restitution of those goods by the Common Law, nor by force of the Statute of 21 H. 8. cap. 11.

Co. 5. 110. Fitz. Co. 298. Stamf. 21. Deodands, are goods, or any other thing, which do cause or are any occasion of the death of a man by misadventure : And the Jury which do find the death of the man, must also find and appraise the Deodand, and the Coroner shall retorn the same in his inquisition, and in whose custody the same goods or Deodand remains : and the Sheriff shall be chargeable therewith ; scil. shall be charged to levy the price of such Deodands of the Town, though the thing were not delivered to them to keep ; or the Sheriff may seise such Deodand ; vide Kiel. 68. that the Kings officer may seize them presently. *Deodands.*

Lavarack's Case, Trin. 31 Ca. Secund. in Banco Regis. See the Statute de officio Coronatoris made Anno 3 E. 1. that horses, oxen, carts, or other things whereby any person shall be slain, that properly are called Deodands, they shall be praised, valued, and delivered (by the Sheriff or Coroner) to the whole Township, who shall be answerable thereto.

Every Sheriff, within one month after the arrival may seize to the Kings use, all the goods and chattels of any outlandish persons calling themselves Egyptians, that shall come into this *Goods of Egyptians.*

Realm: And may keep the one moiety thereof to his own use, making an account to the King in the Exchequer for the other moiety, 22 H. 8. cap. 10.

But every person that shall prove by two credible witnesses, before the Sheriff, that any of those goods were craftily, or feloniously taken from him, shall be presently restored thereto, upon pain of the double value thereof, to be forfeited by the Sheriff, to the party grieved, &c.

And yet note that after the month, the offence is made felony by the Statutes, 1 & 2 Ph. & Ma. c. 4. & 5 Eliz. c. 10. And then the King is to have the whole goods of such Egyptians.

Outlaws goods. Where a man is appealed, or indicted for Felony or Treason, and withdraws and absents himself so long time as that an Exigent is awarded against him (sc. by the space of five Counties) this absenting himself is accounted a flying in Law, for which he shall forfeit all his goods and the profits of his lands which he had the day of the Exigent awarded, or at any time after, although he shall be afterwards acquit of the felony or treason, and although he yields himself upon the Exigent. And the Sheriff or his Officers may, ex officio, seize them presently to the Kings use. See hic antea Fugitives, & Franchises. Stamf. de Prerog. fol. 47. Br. Relat. 16. *Per felony.* Co. 5 110. b. Stamf. 184.

Note that he which is outlawed for felony, shall forfeit his lands, and the King shall have Annum, diem & vastum, &c. But for utlary in any personal action he shall forfeit no land, but only the profits of his lands. Br. Forf. 75. & utlag. 56. and all his goods, chattels, and personal estate; sc. his corn sowen upon the ground, cattel, implements of houshold, and goods moveable whatsoever.

Le reason que utlary in trespass, ou auter personal action n'est forfeiture del terre, come utlary pur felony est pur ceo que coment, le Non apparance est le cause del utlary en ambideux cases, uncore le force del utlary serra esteem accordant al heinousness del Offence, que est le principal cause & foundation del Proces. Finch. 4.

But the party outlawed doth not forfeit his goods, (neither may the Kings Officer, &c. seize them) before the time that the utlary appeareth of Record, sc. either by the Sheriffs Retorn of the Exigent, or that the utlary be removed by a Certiorari; or be certified by the Sheriff, sur Testatum est. Fit. 116. Co. L. 288. b.

Nota que la sont several briefes de capias utlag. l'un tantum de apprehend le party l'auter de prender le party, & Inquir. de bonis. Vide Register, fol. 138. b. inter Judicial. fol. 24. a.

In action personal. The Sheriff (and his Officers) may ex officio seize to the Kings use, all the goods and chattels real and personal, of all such persons as shall be outlawed in any personal action: sc. all such goods as they had at the time of the utlary pronounced: And they may take for the King all the profits of the lands in the possession of the party outlawed, sc. they may mow or sever and take all the corn and grass growing, and may take the feed and herbage of the grounds, &c. (as they arise or grow of themselves) and the rents of his Farmors, as the Plo. 541. b. 5 H. 7. 15. 21 H. 7. 7.

the party outlawed might, But they may not meddle with the possession of the lands, to plough, sow, grant, or let the same, &c. And if the party outlawed shall make a feoffment of his land, the King shall have no more the profits thereof, but the feoffee shall have the same, for that the King hath not any possession of the land, although he hath the profits thereof. See Br. Forf. 24. 26. & 30. & Br. Issues 9. 10. Plo. 541. b. & Stamf. de Prerog. 57. b.

And yet if tenant for years be outlawed, the King (or his Officers) may seize the land and terme, and may plow the same land to sow with corn, and may occupy the same in the same manner as the termor or tenant might. But otherwise it is, when the tenant of a Freehold is outlawed; for in such case the King may cut the grass, &c. for that it is a thing which is annual (i.e. yearly cut or fed) but he may not plow the land, nor cut the underwoods; neither shall the King, or his Officers meddle to cut or crop any trees growing upon the Freehold. Vide 9 H. 6. fol. 21.

But where a woman executrix takes a husband who is outlawed, the goods of the testator shall not be thereby forfeited. 33 H. 6. Br. Forf. 71.

And so if an Executor himself be outlawed, he shall not thereby forfeit the goods of the testator. Ibidem.

If a woman covert be outlawed in an action of debt or trespass, the King is not to have her Terme (or a Lease for years which she hath) for that it is in the husband. 9 H. 6. fol. 52. *Et uncore joint Terme del feme serra mise en execution pur debt al Roy per le baron: Issint le baron forfet Terme que il ad jointment ove sa feme, per Attainder.*

He that is outlawed in a personal action, shall forfeit to the King all such debts as are owing to him by bond or other specialty: but not such debts or other duties, as are due to him by contract, &c. (without specialty) as it hath been anciently holden. See 49 E. 3. Br. Forf. 74. 16 E. 4. 4. & 4 H. 7. 17. Br. Forf. 107.

Le reason del Ley fuit, pur ceo que le debtor poet aver Gage sa Ley envers le dettee sur un simple contract, mes nemy envers le Roy, & pur ceo le Roy n'aver au tiels debts due per contract sans Specialty, eoque le act del offendor ne doit prejudice le debtor.

And yet now it is holden by Sir Edw. Coke in Slade's Case, 4. part, fol. 95. a. that he that is outlawed (in a personal action) shall forfeit such debts and duties as were due to him by single contract. See ibid.

Of things holden jointly, or in common. See hic antea cap. 14. & Plo. 323. & 343. & B. Chose in acco. 2.

No goods lawfully distrained, nor goods letten or demised, nor goods pawned or pledged, shall be taken or seized for outlawry, until the Lease be determined, or the rent or other satisfaction be yielded upon the distress, or the money paid for the pawn or pledge. 4 E. 6. Br. Distr. 75. & Fitz. Bar. 121. 22 E. 4.

But goods bailed or delivered me to keep, if the Baylor be outlawed, these goods may be seised and taken for the King.

If a man that is outlawed shall make me his Executor and dieth, I shall be chargeable to the King for all these goods; and it seemeth the Kings Officers may seise them for the King. Vide 8 E. 4. fol. 6. b.

But no goods fixed or annexed to the Freehold, shall be taken or seised for Outlary, as a furnace, a table fixed to the ground with posts, nor wainscot, doors, windows, locks, pales, and the like. 20 H. 7. fol. 13. b. & 22 E. 4. fol. 12.

Deer in my Park shall not be forfeited by Outlary in a personal action, by Vavisor, 10 H. 7. fol. 7. a. And yet by Brian, 18 E. 4. 14. the King may kill them, and may dispose of them to his own use.

Charters or Evidences concerning Freehold shall not be forfeited by Outlary, 21 H. 6. fol. 1.

A Ward shall be forfeited by Outlary. 33 H. 6. fol.

A Lease or term for years shall not be forfeited by Outlary before it beginneth (as it seemeth:) For a man Outlawed if he getteth his pardon before his term beginneth, yet he shall have his term by *Reed*. 4 H. 7. fol. 10. b.

If the Grantee of an Annuity be Outlawed, before the day of payment, the King shall have it, by Catasby tamen quære, for if he getteth his Charter of pardon before the day of payment, there the King shall not have it; for that it was no duty before. Danby.

In an action of Trespass brought against a Sheriff for taking of goods, he may justifie, for that an exigent of felony was directed to him, and that he took them thereupon; and such Justification is good, although he sheweth not that he had accompted for the same to the King. 3 H. 7. fol. 3.

And if the Sheriff seizeth the goods, and hath accompted for them in the Exchequer, and after the Outlary is reversed: here the parties remedy is only by Petition to the King. Stamf. 75.

In an action of Trespass for carrying away goods, it is a good plea, that the owner was outlawed, and that he as a servant to the Sheriff, and by his commandment took the goods. Br. Trespass 339. 18 E. 4. fol. 9.

But note where the Lord of a Mannor or Franchise, hath by Charter the goods of Felons, Fugitives, or Outlaws, &c. there the Sheriff, or his Officers, are not to seize or meddle with such goods: And yet such Lord must have them by Charter, and not to claim them only by prescription or usage: And such Charter must be made within the time of memory, &c. (sc. since the time of King Richard the First) and by plain and special words; or else such Charter must have the aid and help of some other matter of Record, within the time of memory,

memory, as allowance before the Justices in Eyre, or before the Justices of the Kings Bench, or (in some cases) before the Justices of the Common Pleas, or before the Barons of the Exchequer, or by force of some confirmation by Charter of [illegible] some King or Queen within the time of memory: Such a Charter is only good for such part of such Charter, as hath been so allowed or confirmed. Coke 9. 27. 28.

If the Sheriff (or any other Officer) shall wrongfully seize or take one mans lands, or goods, being of the same with another that is outlawed, in such case the party grieved, his executors or administrators may have a Writ de Identitate nominis directed to the Sheriff, &c. whereupon the party grieved shall find Sureties before, or to the Sheriff (or other Officer which hath warrant to seize) to answer the King of the value of such Lands, or goods and chattels, in case that he cannot discharge himself: And for this the Sheriff (or other Officer) shall not take any thing of the party, but shall forthwith (upon Sureties found as aforesaid) deliver to the party grieved his goods, &c. again, upon pain to lose to the party grieved his double damages, and besides to be grievously punished to the King. See the Statutes of 37 E. 3. ca. 2. & 9 H. 6. ca. 4. & Fitz. 268. *Identitate nominis.* *The Parties' sureties.*

But the better to prevent such mistaking of one man for another, the Statute of 1 H. 5. cap. 5. hath ordained, that in every Original Writ of Actions personal, Appeals, and Inditements, in which the Exigent shall be awarded, there shall be additions to the Defendants name, sc. of their Estate, Degree, or Mystery, and of the Town, and of the County, where they be conversant: And that for default thereof, all Outlaries thereupon shall be avoided. Co. 6. 67. & Br. Addition 4. 14. & 19.

Yea if the Additions of the Town or County be false, the Outlary shall be avoided thereby. Dyer 223.

Nota per *Bracton*, libro 3. Homo utlagatus forisfacit patriam, amicos, quæ pacis sunt, quæ legis sunt, & quæ juris & possessioni sunt. Vide *Stamf.* 196. Mes ceo est d'estre intend, accordant a le several natures des Outlaries. So that this is the nature of Outlary in Capital Offences (sc. to forfeit and lose his Country, his Friends, his Peace, his possessions, the profits of his Labour, and of his grounds) but in lesser offences or contempts, the forfeiture is more easie. Vide Bracton lib. 3. fol. 128. b. And the same punishment were they to have who relieved or harboured them wittingly. See ibidem. *Regist.*

Que Outlary est un Judgement d'estre hors de Protection del Roy, & ses Leyes. *Finch.* 116.

Note also that when the Outlary with the Exigent is returned by the Sheriff into the Court, &c. then is it a good Utlary to disable the party to sue, &c. And yet before the Return, it is sufficient and good for the King, and therefore the Kings Officers may seize to the Kings use the goods of the party Outlawed, &c. least they be imbezelled. But the Sheriff may not sell the parties goods before the Capias Utlag comes to him: Neither doth the Capias Utlag warrant the Sheriff to sell the goods. See hic cap. 59.

Sur brief de Capias utlagat. *le vic. poit vender les biens del party utlage; mes il plus safement poit conserve al oeps le Roy.* Co. 5. 90. b. Dyer 363. 223.

Uncore si le utlary soit apres reverse per brief de Error, *le defendant avera restitution de ses biens.* Co. 8. 143.

Issint si les utlary soit reverse per Plea, ou que ad chre. de pardon. vide Fitz. Retorn. 36. Scire facias 68. Error 62. Br. Chr. 11. 12. Error 56. Restitution 2. & utlar. 5. *& hic infra.*

Mes si les biens dun home utlage sont vend per le vic. sur brief de Capias utlagat. &c. *& apres le utlary est reverse per brief de Error, le Defendant avera restitution de ses biens, pur ceo que le vic nest compellable ne commaund de vender eux: car per le* Capias utlagat. *le vic. est commaund pur prender le corps, &c.* Et bona & catalla quæ per Inquisitionem invenerit in manus nostras, ut de vero valore, &c. Et sic vide diversitatem *inter meame acts & faits in execution de Justice que sont compulsive, & acts que sont voluntary.* See hic postea Exec' per Fieri facias, *& Retorne super Exigent.* Co. 3. 90. & 8. 143.

Uncore si le vic. ad seise les biens dun home utlage, & ad accompt pur eux in le Eschequer & apres le utlary est reverse, in tiel case le party ad nul remedy pur ses biens, mes tantum per petition al Roy. Stamf. de Prerog. 76.

Vide 8 R 2. Fitz. Supersedeas 19. *Que sue utlary retorne per le vic. brief issera al Eschcator de seisir les biens & chattels, &c.*

Cesty que est utlage sur Indictment de Trespass al suit le Roy, fera fine & ransome (que est treble le fine al meines) Br. Utlag. 37. vide Co. L. 127 *que fine & ransome in legal understanding sont tout un.*

Si al temps del Exigent agard, le defendant soit in prison, ou outster le meere, ou que le Exigent issera auterment erronice, uncore si le vic. seiser ses biens al oeps le Roy, le defendant navera restitution de ses biens, tanque le agard del Exigent soit defeate: Et pur ceo in tiels cases, le defendant, ses executors, ou administrators doient porter lour brief de Error, de reverser mesme le Exigent; car intant que le Roy est intitle (a les biens, &c.) per matter de record, il besoigne que ceo soit avoid per matter de cy haut nature. Vide Co. 5. 111. 43 E. 3. f. 17. & Fitz. Forf. 19. 31. & Plow. 137. b.

Plea. *Uncore vide utlary reverse per plee, sans brief de Error.* Br. Utlag. 28. 31. 47. 75. 77. & 79. Fitz. Index. tit. Utlag. & Dyer 223. Cor. L. 259.

Auxi per le Stat. 6 H. 8. c. 4. *touts utlaries eme contrary al dit Stat. serra avoide per Averrment, sans suer ascun brief de Error.* Vide etiam Stat. 31 E. c 3. P. Exigent 5. & 15.

Mes devant allowance d'ascun brief de Error, ou reversing d'ascun utlary per plee ou auterment le defendant serra lie de appeare, & de respender le plaintiff en le former suite, sur un novel action, & de satisfier le Condemnation, &c. 31 Eliz. cap. 3.

Si

Si home ad charter de pardon portant date devant le Exigent, la les biens del party ſoit ſave per ceo, pur ceo que le cauſe del ſeizing de eux, appiert de record. Co. 5 111. Vide Stanf. 184. Pardon.

Mes nota, que devant pardon de utlary ſerra graunt ſi le utlary fuit ſur original (devant ſon apparance) le party dont primes yeeld luy meſm al priſon &c. Fitz. 247. g. *Et ſi le utlary fuit apres judgement le party dont primes agree ove le plaintiff pur ſon det ou damages.* Vide Stat. 5 E. 3. c. 12. Fitz. Chre. de Perdon 27. & 28. & Fitz. Utlag. 4. Finch. 350.

Et ſi le Roy pardon home que viet eins per Capias utlagatum, devant que le party ſoit ſatisfie, ſi ſoit apres judgement & le vic. luy ſuffer de eſcape, le plaintiff avera action envers le vic. &c. Ad. H. 36 Eliz.

Auxy ceſtuy que voile defeate un utlary per reaſon de impriſonment, dont yeeld luy meſme al priſon, &c. 5 E. 3. c. 13.

Auxi nota que charter de pardon ne ſerra allow, tanque le party utlage ad ſue un Scire facias *de garner le party plaintiff & s'il appeare, donque le def. reſpondra luy, &c. Vide Termes del Ley tit. Utlary.*

Note that the Sheriff, nor his Officers, may not arreſt or attach the body of any man that is outlawed in any perſonal action, without a writ of Capias utlagat. firſt delivered to him; but otherwiſe it is where the utlary is for felony or treaſon. See Dyer 120.

And yet the King may impriſon the body of him that is outlawed in any perſonal action, until he ſhall purchaſe his charter of pardon, to which purpoſe the ſaid writ de utlagato Capiendo is. Old na. bre. 168.

Auxi l'opinion in 1 E. 3. fol. 2. *eſt que ſi home ſoit utlage in perſonal action, cheſcun home poet luy prend. & detein.*

Note alſo that the goods of perſons outlawed may belong to a Subject, by the Kings grant, but not by preſcription. Co. 9. 27. 29. Plo. 81. b.

There be other things belonging to the King, *quia non apparet dominus eorum*, in regard that the true Proprietor or Owner thereof cannot be known, as Treaſure trove, Wreck, &c.

CAP. 16.

Treaſure trove.

Treaſure trove dicitur, where money or coin, gold, ſilver, plate, or bullion is found in any place, the owner thereof being unknown: and ſuch goods or treaſure the King is to have; and the Sheriff may ſeize Treaſure trove.

seise it to the Kings use. And it seemeth to be all one, whether it were hidden in the ground, or only lost. See Bracton 119. 120. Br. Coron. 176. & Presentments 24. & 27. Ass. pl. 19. Finch.

Mr. Bracton, lib. 3. saith, Occultatio thesauri inventi fraudulosa, est quasi crimen furti. Est autem thesaurus, quædam vetus depositio pecuniæ, vel alterius metalli, cujus non extat modo memoria, ut jam dominum non habeat, & sic de jure naturali sit ejus qui invenerit: Alioquin si quis aliquid lucri causa, vel metus, vel custodiæ, recondiderit sub terra, non erit thesaurus, &c.

And so treasure trove sc. anciently hid in the earth, belongeth to the King; but not treasure found upon the land, and not hid in the earth; nor treasure found in the sea, for such belongeth to the finder, and not to the King. See Br. f. 26. Stamf. f. 40. a. Finch. f. 45.

But howsoever, non pertinet Domino Regi, nisi quando nemo scit quis abscondit thesaurum, or *quando nemo scit cui le coine trove apperteine:* for if the owner thereof, or he which hid the same, be known, then he shall have the treasure, coin, or goods found, and if he die before it be found, then it seemeth his executors or administrators shall have the same. See Direland's Case. M. 22 H. 6. Br. d'Ass. 69.

Also all Mines of metal (except Mines of gold and silver) do appertain and belong to the owners of the soil wherein they are found; and the mines of gold and silver belong to the King. Br. Coron. 176. See Br. Prærogat. 134. & 137.

Also see Master Plowden, fol. 314. &c. That if gold or silver be in Mines, or Ores of Copper, Tinn, Lead, or other base mettals, the whole Mint pertaineth to the King, sc. all Mines of gold or silver, in which the gold or silver is of the greater value, belongeth to the King. Plo. 336. & Finch. fol. 45.

Nota que touts Mines Royal, soient ils de pure Ore, ou Argent, ou mixt, poent estre grant al Subject, per apt. parols, & ne sont inseperablement incident al Corone. Plo. 336.

Le punishment pur Treasure trove prise & emport, & de wreck de meere, & waisse, serra per imprisonment & fine, & nemy de vie & member. Fitz. Coron. 187. & 265.

Wreck of the Sea.

Mr. BRacton, lib. 3. fol. 120. saith, Wreckum dici poterit, quasi derelictum, ut si quid (navis levandæ causa) à nave projectum fuerit ab aliquo, sine animo retinendi vel repetendi, id proprie dici poterit wreckum cum res projecta habita sit pro derelicta, &c.

Wreck. Wreck is by the Civilians called Naufragium, where a ship perisheth at the sea. 3 E. 1. c. 4.

Concerning

Concerning wreck of the sea, the Statute of Westminster 1. (made Anno 3 Ed. 1. 4.) is thus; where a man, a dog, or a cat escape quick or alive out of the ship to the land, no such ship or barge, nor
Br. Wreck 2. any thing within them, shall be adjudged wreck; but that the goods shall be saved and kept by the view of the Sheriff (or Coroner) and shall be delivered into the hands of such as are of the Town where the goods are found; so that if any sue for those goods, and prove that they were his, within a year and a day, they shall be restored to him without delay, and if not, they shall remain to the King, (as belonging to him by his Prerogative) and shall be seized by the Sheriff, or Coroner, and praised by a Jury, and delivered to the Town, who shall answer therefore, &c. Vide officium Coronat. 4 E. 1. & Doct. & St. 156. 157.

Coment que les parols del ceo Statut' sont tiels, sc. soient les choses gardes, &c. per queux parols semble que le ville ne poiet prender tiel biens sans le view & delivery d'ascun officer le Roy, uncore semble que le ville poiet ceo prender sans ascun delivery del officer; & auxi que le vic. poet ceo prender sans Committer le Custody del eux al ville.

Note that if the goods within such a ship, be of that sort that they cannot be kept sweet and good by the space of a year, there the Sheriff, or officer, may sell such goods, and deliver the money taken for them, to the Town to keep and answer for them. But if the goods were such as might be kept a year, there the goods shall be kept and preserved during the year, or else the officer is punishable, &c. Plo. 466.

By the Common Law if goods were wrecked, they were immediately
Do. & Stu. c. 51. (and ipso facto) forfeited: And now by the former Statute of Westminster 1. c. 4. the party shall have a year and a day to prove his property, if a man, a dog, or a cat shall escape to land out of the ship alive: but if nothing escape out of the ship alive, it seemeth that the goods wrecked are presently forfeited to the King, so as the owner shall not be admitted to prove his property, for that this proof within the year and day is given only where something escapeth alive. See Termes of the Law, & Br. Wreck 3.

Br. Wreck 3. Where wreck belongeth to another than to the King, he shall have it in like manner as the King should; but there the Sheriff is not to meddle therewith: As where the Lord of any Liberty, Franchise or Mannor, hath wreck granted by Charter, &c. or hath had any wreck by Prescription, &c. for otherwise the King by his Prerogative shall have the wreck of the Sea throughout the Realm. 17 E. 2. cap. 11.

27 E. 3. But by the Statute made 27 E. 3. c. 13. if any ship shall perish on the Sea, and the goods come to land, which be no wreck, the owner shall be required to prove the said goods to be his own; and upon proof thereof they shall be presently delivered, paying to them that have saved and kept the same, convenient for their travel, by the discretion of the Sheriff, or other officers, with the assent of four or five of the best or most sufficient discreet men of the Country.

Master Bracton, lib. 3. saith thus hereof, Item magis proprie dici poterit wreccum, si navis frangatur, & ex qua nullus vivus evasevit, Et maxime, si dominus rerum submersus fuerit: Et quicquid inde ad terram

N venerit,

venerit; erit domini Regis: And therewith agreeth the Book of Entries, fol. 611. 612. tit. Trespass in Wreck. And accordingly also it was adjudged in Sir Henry Constables Case, Co. lib. 5. fol. 106. that nothing shall be said to be Wreccum Maris, but such goods only, which are cast, or left upon the land by the sea: For Wreccum Maris significth, illa bona quæ naufragio ad terram appelluntur. Sed quæ in Mari longius à littore inveniuntur ita quod constare non possit ad quam terram vel regionem essent applicanda, tunc quicquid ita inventum fuerit, erit inventoris, &c. quia non est aliquis qui inde privilegium habere possit; Rex non magis quam privata persona, &c. Bracton, fol. 120. Co. 5. 106.

Nota que wreck de meare serra trie per le Common Ley, & nemy per le Admiralty. 15 R. 2. c. 3.

There be other casual profits of like nature, as *Flotsam*, *Jetsam*, and *Lagan*.

Flotsam. Flotsam, is where a ship is drowned, or otherwise perisheth, and the goods float upon the sea, or swim upon the water, sc. upon the top of the water. Vide Minsh. Co. Ibid.

Jetsam. Jetsam, cometh of the French word Jetter, to cast out, and is when a ship is in peril to be drowned, and for to disburden the ship, the goods are cast into the sea, and after the ship notwithstanding perisheth. Co. Ibid.

Lagan. Lagan, vel potius Ligan, is when the goods are so cast into the sea, (sc. to disburden the ship, &c.) and after the ship perisheth, and those goods so cast out, are so heavy that they sink to the bottom, and the Mariners, to the intent to have them again, do tie unto the said goods a cork, or other thing which will not sink, so as they may find them again; and they are called Ligan à Ligando. Co. Ibid.

And so note that wreck is when the goods are by the sea cast upon the land, and so infra comitatum, whereof the Common Law taketh conusance; but the other three (Flotsam, Jetsam, and Lagan) are all upon the sea, and therefore of them the Lord Admiral hath jurisdiction. Co. Ibid.

Note also that none of those goods which are called Flotsam, Jetsam, or Lagan, shall be wreck so long as they remain in, or upon the sea; and being upon the sea, quære if they are not due and belonging to the Lord Admiral by vertue of his Letters Patents.

But if any of them shall be cast upon, or driven to the land by the sea, then they shall be called and said to be wreck, and so the King shall have them, or any other Lord, &c. by grant of wreck from the King may have them, for that they being cast upon the land, will pass by the grant of wreck. Co. 5. 106.

And the King shall have Flotsam, Jetsam, and Lagan, (remaining in or upon the sea, sc.) when the ship perisheth, or when the owner of the goods is not known. Co. 5. 107.

Note

Co. 5. 117. Note that the ship must perish, or else the goods cannot be forfeit, nor said to be wreck. But though the ship perish, yet if any of the servants escape, the law saith, that they have the custody of the goods, and so they are not wreck, nor forfeited.

If the ship be broken by tempest, and the goods cast upon the land, they are not wreck. Fitz. 112. c.

So if goods are cast into the Sea for doubt of a tempest, they are not wreck, nor forfeit. 46 E. 3. fol. 15. And therewith agreeth Master Bracton, lib. 2. Res habita est pro derelicta ubi dominus statim desinit esse dominus, si autem causa navis alleviandæ, non sic, quia non ea voluntate ejecit quis, ut desinat esse dominus, &c.

Co. Ibid. Also in Sir Henry Constables Case aforesaid, it was adjudged, that the afore recited Statute made 3 E. 1. concerning wreck, was but a declaration of the Common Law, and all that is therein contained concerning wreck, shall be also extended to Flotsam, Jetsam, and Lagan: And that if the owner of such goods shall prove that they were his, within a year and a day, they shall be restored to him, and if the owner dieth, his executors or administrators making proof that they were their testators, &c. they shall be restored to them.

Note that the year and day in such cases shall be accounted from the time of the taking or seisure of such goods as wreck; for although that the property be in law vested in the Lord before seisure, yet until the Lord (by his officers or servants, &c.) seizeth them, and taketh them into his actual possession, it is not known either who claimeth the wreck, or to whom the owner shall resort to make his claim, and to shew his proofs. *Vide quel maner de proofes le owner fera.* Co. 5. 108. a.

Co. Ibid. If the wreck belongeth to the King, the owner may have a Commission to hear and determine the truth of such proofs as the owner shall bring, &c. which must be by a Jury of twelve men.

It was there holden, that the King shall have Flotsam, Jetsam, and Lagan, by his Prerogative, although they still remain in, or upon the sea; (for the sea is of the Kings ligeance, and parcel of his Crown of England, &c.) and yet another may have them by the Kings grant. Co. ibid.

Co. 5. 108. Note that at the first the Common Law gave as well wreck, Flotsam, Jetsam, and Lagan, upon the sea, as Estrays, Treasure trove, and the like, to the King: for that by the rule of the Common Law, when no man can claim property in goods, the King shall have them by his Prerogative.

Also note that wreck is an estray upon the sea, coming to land, as an estray of any beast is upon the land coming within any priviledged place or seigniory, &c. And the Law giveth in both cases (sc. in case of wreck and estray) a year and a day to the owner to claim them. Co. 5. 108. & Finch. 45.

Also if the goods of an infant, woman covert being an executrix, a man in prison, or of a man beyond the sea, shall be wrecked at the sea,

if they be not claimed and proved to be theirs within the year and day, they shall be all forfeit, &c. For the Law is strict and binding in this case, as well as in case of an estray, (whereof see antea tit. Estray.)

By the Statute de Prerogativa Regis (made Anno 17 E. 2.) the King shall have wreck of the sea throughout the Realm (except in certain places priviledged by the King) which Statute also is but a declaration of the Common Law: Co. 5. 108. 17 E. 2. c. 11.

Whales, &c. Also by the same Statute of Prerog. Regis, the King shall have Whales and great Sturgeons taken in the sea, or elsewhere within the Realm, (except in certain places priviledged by the King) which was also the Common Law before the said Statute. Co. 5. 108. Plo. 315. Br. lib. 3. 12c.

Also it seemeth by the Common Law, that the King (by his Prerogative) shall have other fishes Royal taken in the Sea, or elsewhere within this Realm, as the Porpus, &c. 39 E. 3. Br. Prerog 35. for the excellency of the person of the King doth draw and appropriate unto him the things of excellency. Plo. 315. vide Br. Prerog. 35. *que le Roy avera.*

CAP. 17.

Wards.

Wards and Escheats. By the Statute de Scaccario, made Anno 51 H. 3. Sheriffs shall seize and keep all such Wards and Escheats (that are not in fees) as belong to the King, which be within their shires, and of the issues thereof they shall be answerable in the Exchequer, when they account for their Counties; and they might let to Farme, or otherwise, such Wards and Escheats, &c. and might seize their bodies, &c. 51 H. 3.

Also by the Statute made 2 & 3 E. 6. c. 34. it seemeth that Sheriffs shall be accountable for all Wards marriages, and reliefs; and for all fines, for alienations and intrusions made by the Kings tenants within their County. 2 Ed. 6.

But by the Statutes made 32 H. 8. c. 46. & 33 H. 8. c. 22. & 34 H. 8. c. 46. all the Kings Wards are to be within the order, survey, and governance of the Court of Wards; together with their lands, rents, and issues thereof. And the Escheator is now the Officer appointed to enquire thereof, and to seize the lands, &c. But at this day the Escheator doth not, nor cannot seise, until there be an Office first thereof found, &c. Stamf. de Prerog. 78. b. vide Br. Office dev't Esch. 12. 14. 55. & 60. Intrusio. 18. Prerog. 30. Co. 8. 169. & 9. 95. 32 H. 8.

The King (by his Prerogative Royal) shall have the wardship of all their lands, which hold of him in chief by Knights-service, whereof the tenants were seized in their demesne as of fee, the day of their death, of whomsoever they hold, &c. 17 E. 2. c.

Also

Also the King by his Prerogative of the wardship of the heir, shall have Rent Charges, Commons, Estovers, Annuities, Advowsons, Offices, and the like, which descend, &c. to the heir: 12 H. 7. Br. Prerog. 63.

Nota le possession en Ley d'un chattell est vest in le Roy sans ascun office, & pur ceo ou le Roy est entitle al wardship, ou Primer seisin, le officer le Roy poet seisir & prender les profits al use le Roy. Staunf. de Prerog. fol. 54. a.

CAP. 18.

Escheats.

NOte that Escheats do happen two manner of ways: 1. Per defectum sanguinis. 2. Per delictum tenentis, sc. by attainder. Co. L. 13.

De haut Treason, le Roy avera le escheat, de quocunque tenuerit, 22. Ass. pl. 49. Br. Escheat 14. Stat. 25 E. 3. c. 2. 26 H. 8. 13. *Escheats:*

Mes ceo est quant l'offend. sont atteint durant lour vies. 34 E. 3. c. 12.

Also this must be understood of such lands whereof the person attainted was seized. Co. L. 13.

Ou le tenant est attaint de felony, il est al election del Seignior d'aver brief de escheat, suppose que le tenant fuit attaint de felony, ou que il devie sans heir, car per l'attainder le sanke est corrupt, 48 E. 3. fol. 2.

Si home fait felony, & puis purchase terre, ou terre discend a luy apres, ceux terres sont forfeit & escheat, cybien come le terre que il avoit al temps del felony fait, ibidem.

Er. Esch. 29. *Home attaint de Heresie, son terre ne escheator, si non que il soit ouste al execution; & donque si le terre soit tenus del Roy, il avera le escheate.*

Si home soit miscreant, sa terre escheat al Seignior. 5 R. 2. Fitz. Trial 54.

Roy avera le escheates del tenants, del Archievesques, & Evesques in temps de vacation, 17 Ed. 2. c. 14. Vide hic antea Forfeit.

Roy avera le escheate de touts les tenements in London, *de quocunque ils sont tenus;* 49 Ed. 3. 5. Fitz. Prerogat. 15.

Omnes escaetæ civitatum mero jure pertinent domino Regi, de quibuscunque feod. tentæ sunt, 8 Ed. 2. Fitz. Esch. 12. Finch.

Alien

Alien nee ad issue fits, & puis est fait Denisen, & purchase terre & devie, tiel fits navera le terre, mes Eschcator.

Home ala ultra meere, extra allegiance le Roy, sine licentia Regis, & la espousa feme, & ad issue fits illonque, & devie la, tiel issue ne inheritera, mes le terre eschcater, Br. Esch. 8.

Fits est attaint de felony in vie le pere, & happa Charter de pardon, le pere devie, & le fits survive, le terre Eschcater, ibidem.

Le eigne fits est attaint de felony, puis son pere devie, le terre le pere Eschcater. 49 Ed. 3. Br. Discent. 7.

Ou heir fault per demy sanke, ou de part le pere, &c. le terre Eschcater. ibidem.

Terre taile ne eschcater pur le felony, ou pur le attainder del pere. 29. Ass. pl. 61.

Rent ne Eschcater, car le terre est tenus, & nemy le rent.

Nota que si tenant le Roy devie sans heir, & nul enter, le franktenement est in le Roy, sans office, ou entre, car franktenement ne poet merger. 9 H. 7. fol. 2. Br. Escheat 25. & 33. Plow. 229. b. *Et en tiel case, le Roy a son pleasure poet enter, ou seise per son Officer.* Stamf. de prerog. 54. a.

By the Statute *de Scaccario*, Sheriffs shall seize the Escheats that fall, to remain unto the King in fee, and shall certifie the King of them without delay. 51 H. 3.

But quære what the Office or Authority of a Sheriff is, at this day, concerning Wards, or Escheats; for the Escheators Office is properly to look to Wardship, Escheats, and other casualties belonging to the Crown. Co. L. 13. Plus hic c. 6. 7. & 14.

CAP. 19.

Ideots.

IDeot quis. Vide Co. 4. 126. Co. L. 147. Stamf. 35.

Ideots. If there shall be Ideot (sc. a natural fool, à Nativitate) there may be a writ awarded to the Escheator, or to the Sheriff, of that County where such Ideot is abiding, both to examine him, and also to enquire by a Jury, &c. of such Ideot, and of his lands, &c. Fitz. 232. 233. Stamf. de prerog. fol. 34. Regist. 226. 267.

But there can be no seisure of the lands, &c. without an office first found. Stamf. ibid. 55.

La Stat. de Prerogativa Regis, est quod Rex habebit Custodiam terrarum fatuorum naturalium, capiendo exitus eorundem, &c. *Et coment que le dit stat. dit* Custodiam terrarum, *uncore le Roy avera oibien le custodie del corps, biens, & chateux del Ideots come de lour terres, &c. & cybien ceux terres que il ad per purchase, come ceux queux il ad come heir, &c.* Co. 4. 126.

Et nota que le Roy avera le Custody de tiel Ideots durant lour vies, Car les parols del Statut sont, & post mortem eorum reddat eam rectis heredibus. Stamf. de Prerog. 34. 35.

Sed inveniet (Dominus Rex) eis necessaria, &c. *le Roy doit provider pur le maintenance de tiel Ideot, sa feme, children & family.* 17 Ed. 2. c. 9. Stamf. 35. 37.

But note that all Ideots and natural fools, and their lands, &c. shall also be in the ordering of the Court of Wards, &c. Stat. 32 H. 8. c. 46. Stamf. 36.

And the King shall here be answered of the issues of their lands, but from the time of his title found by office. Co. 8. 170. Stamf. 84. & 34.

And the King shall have to his own use the possessions of an Ideot or fool natural, and the King may let the same to farm reserving a rent. Finch. 95.

Mes le Roy navera le Custody del terre, que le Ideot teigne per copy, car ceo nest que estate a volunt, &c. Co. ibidem.

Auxi le Roy ne poet aver tiel ter al que le Ideot ad title pur Entre ou action, Finch. 95.

Auxi le Roy navera les profits del terre, &c. forsque apres office trove; car per l'office appiert de record que le Roy ad droit de seiser les terres. Co. 8. 170. Stamf. de Prerog. 34.

Et sic nota que le Roy seisera le terres de Ideots, & heire suera livery: mes auterment est de terres de Lunaticks, & de terres del Ideots per accident ou infirmity. Co. 4. 126. & Br. Ideot 5. Stamf. 34. & 37.

Lunaticks le Roy protect eux, & prend les profits de lour ters, & biens, & ove ceo maintein le lunatick & son family; Mes le Roy ne prendet ascun part des profits, &c. a son oeps demesne. 17 E. 2. c. 10. Co. 4. 127.

Quel person serra dit Ideot, & quel Lunatick, Vide Co. 4. 124. 128. Fitz. 233. b.

Le manner del Trial del Ideot. Vide Co. 9. 31. Stamf. 34. & Fitz. 233. b.

Si un soit trove Ideot, que ce vera n'est issint, Coment il avoid cel office. Vide Fitz. 233. a. Et Stamf. de prerog. 36.

Que avera le ordering, &c. del terres del Ideots. Vide Stat. 32 H. 8. c. 46. P. Prerogat. 10. & Wards 27.

Lastly, the words of the Sheriffs Oath are, You shall truly keep the Kings Rights, and all that belongeth to the Crown; Now these former, and other the Kings Prerogatives of the like kind, although they are a great part and portion of the rights, profits, and commodities of the Crown, yet this Prerogative doth not only extend to such benefit and profits as the King is to have from his Subjects; But also to the Kings person, to free it so that it shall not be subject to any mans suit, And also to his possessions, so that they may not, nor cannot be taken from him by any violence, or wrongfull disseisin; And to his goods and chattels, so that they are under no tribute, toll, or custom, nor otherwise distraineable. Stamf. Prerog. 5. And in all these and other the Kings Prerogatives, the Sheriff is to do his best endeavour for the keeping and preserving thereof, so far forth as belongeth to his office. Plus Stamf. 74, 75. Vide Aff. tit. Prærog. 45. 58. 59. 60.

For the Kings Person. See hic c. 22. & Br. Petitio. 12. 28.

For his possessions or his lands, that they be not to be extended or taken in execution. See hic c. 26.

That his lands are exempted from distresses for rent, &c. ibid. & Stamf. 75. Vide Aff. tit. Distress 12.

That his goods cannot be taken for waifes, or estrays, or for wreck. Aff. tit. Prerog. 44. & Br. Wreck 2 Plo. 243. b.

That the King shall find no pledges *de Prosequendo*, hic c. 52.

That the King shall not be amerced being non-suit. Co. 8. 61. Br. Amercement 53. Fitz. 31. f. & 101. a.

CAP. 20.

Direction and Execution of Writs.

A que breves serront direct.

The office of a Sheriff consisteth chiefly in the execution and serving of Writs and Process of Law, to compel men to appear to answer to the Law; and also for taking of mens bodies, or lands, according to Judgments given in superior Courts: and to do this he is the immediate Officer of the King and all his Courts: And he is sworn that he shall truly do this, and he must do this without any favour, dread, or corruption. Dyer 60. b. Plow. 74.

Al Vicont.

By the ancient Law of this land, all Original Writs (purchased at the suit of the party to maintain actions) are to be directed to the Sheriff of the County where the cause of the suit doth arise; and cannot be directed to any other person than the Sheriff, unless it be in special cases where there shall be good cause of exception to or against the Sheriff, and there the Writ shall be awarded to the Coroner, who then standeth in the place of the Sheriff. Co. 3. Pref. Br. offic. 2. Finch. 13.

Et

Et per cest Action de Debt pur escape poet estre port en le County (sc. direct al vic. del County) lou le Arrest, ou escape fuit fait mes nemy in ascun auter County. Mes Trespass de Battery, biens emports, ou escripts enfreint, poet gise in ascun County, car ceux ne sont local: Auterment de herbes debrusés, Arbres succide, ou tiels ils serra port in lour proper County. 14 E. 4. fol. 4. a Mai. En Attaint. 104. & Finch. 53.

Auxi per la Stat. 6 R. 2. c. 2. *est ordein que brief de Debt, de Accompt, & touts auters tiel semble quecunque serra direct al vic. del County l'ou le cause d'action commence, & si soit monstre in le plea, sur les dits briefs, que le contract se fist in auter County, que in le brief. Original soit contein, incontinent, le brief abater.* Vide Fitz. bre. 18. 23. 44. 649. & Br. Examin. 2. & visne i.

Also where it is alledged by either party (sc. by the plaintiff or defendant, &c.) that the Sheriff is cosin, or otherwise of kindred, or tenant to the other party, and the other party doth not deny this: in such cases process shall be directed to the Coroners of that County, and and shall be executed by them. Br. Chall. 78. Officer 14. & Proces 63. 70. Dyer 188. 300. & 376. *Al Coroners.*

12 H. 4. 24. 8 H. 6. 26. So where the Sheriff is a party to the suit, the process shall be directed to the Coroners. Keilw. 96.

9 H. 6. 1?. 14 H. 6. 1. 21 H. 6. 18. 34 H. 6. 12. 12 H. 4. 24. And yet you may observe much contrariety in our Books herein, for some hold a difference where the Sheriff is plaintiff, and where defendant, for where he is plaintiff, the process shall be directed to him against the defendant, and he may serve it himself (sc. the summons and Capias, and other like original process shall be directed to him against the defendant) except the panel of the array which he shall not make, and except where he is named Sheriff in the Writ, for there the Coroners must execute it: And it seemeth that the Writ to the Coroners in such cases is, that the Sheriff se non intromittat. 18 E. 4. 7. See Br. Process 9. 14. 40. 58. & 118.

Br. Process 65. 145. And where the Sheriff is plaintiff (and not named Sheriff in the Writ, there) he may serve the process, sc. the Summons, Capias, and the like, upon the defendant, and he or his Under-sheriff for him may afterwards put in pledges de prosequendo) in the Chancery, or in the Court of Common Pleas where the Writ dependeth, and when they come to issue, he, or the defendant may shew that he is a Sheriff, and then the Venire facias shall be directed to the Coroners. Keil. 96. for the Venire facias.

And yet see Br. Process 60. & 106. 118. 140. the contrary, sc. that the process shall go to the Coroners, wheresoever the Sheriff is a party, and that there should be no diversity where he is plaintiff, and where defendant, and that he may neither serve process upon him, nor for himself: Ideo quære.

9 H. 6. 10. If the Sheriff be defendant, he cannot serve the process upon himself: 2 H. 6. 12. 8 H. 6. 30. 9 H. 6. 10. Bro. process 9. Neither can he distrain nor summon, or warn himself. Finch. 6. & hic c. 45.

And yet the books vary in this also: See 18 H. 8. 3. Fitz. & Register 81. b. & Thel. 107. 108. Vide Plow. Wimbish his Case, an original

Writ, *de assise de novel disseisin*, directed to the Coroners, was adjudged good, in regard that Assises ought to be speedy, &c. But otherwise there seemeth a difference between other Writs original, that they in all or most cases shall be directed to the Sheriff, but that Judicial Writs may be directed to the Coroners: See Plow. 74.

But (in an Assise of *Novel disseisin*) if the Sheriff (by craft to have the Writ directed to the Coroners) be named one of the disseisors where indeed he is no disseisor, nor ever was disseisor or tenant of the lands in demand, the tenant in the said Assise may aver this covin, or the Sheriff may shew this matter and covin to the Court, and pray that it may be enquired of, and if it be found that the Sheriff was no disseisor, but was named disseisor by collusion, then shall the Writ be abated, and the plaintiff in the grievous mercy of the King: 11 H. 6. c. 2. Fitz. N. Br. 155. a.

Default. Also in some cases where the Sheriff maketh default of serving the process, it shall be directed to the Coroners: See Fitz. Process 48. 51. Br. Officer 43. & Fitz. fol. 54. e.

And in some process (sc. an attachment) shall be directed to the Coroners against the Sheriff, for his default in not serving or returning process, &c. Fitz. 54. e. 62. o. 64. b. 68. c. 98. c.

Partiality. So where partiality is found in the Sheriff in returning the Array Br. Process
(or Jury) partially, and thereupon the Jury is quashed, there process 155.
shall go to the Coroners, and in such cases also the Writ to the Coro- Co. 10. 103.
ners is that the Sheriff shall not intermeddle: 18 E. 4. fol. 3. See 104.
Dyer 188. Co. L. 138.

And yet where any are returned or put in the Pannel by the Under-sheriff, or by the Bayliff which are partial or favourable, &c. the Array shall be quashed for that cause, and by some opinions the Sheriff shall make the new Array, for that there was no default in him. 28. Ass. Pl.

But others hold the contrary, for that this shall be intended the Sheriffs own act, and so it appeareth by the Retorn; for therein the Sheriff maketh no mention that he did write to his Under-sheriff, or Bayliff, as to a Bayliff of Franchise, &c.

But if the Sheriff be dead or removed, or that otherwise there be no Br. Process 7.
Sheriff, there the process shall not be directed to the Coroners, but shall stay until another Sheriff be chosen; for that the Sheriff being the immediate Officer to the Court, process shall not go to the Coroners but only in special cases; as where it is alledged that the Sheriff is of kindred, or tenant to either party, or that the Sheriff is party to the suit, ut supra, or that the Sheriff made default, or is found partial, ut supra; in such cases process shall be directed to the Coroners, and otherwise not.

If the Venire facias be awarded to the Coroners, where it ought to have been directed to the Sheriff, or è converso (and so the Jury be returned by such as have no authority) it is error; and is not remedied by the Statutes of Jeofails: Co. 5. 36. & 8. 162. 163. Dyer 367. Pl. 40.

Note

Note where the Original Process is once directed to the Coroners, all the residue of the process in that suit shall ensue the original, and shall likewise be directed to the Coroners, yea although that Sheriff be removed, or dead, or acquited, and another indifferent Sheriff be chosen, depending that suit and process: See Br. Process 4. 73. 118. 144. 155. & 183.

14 H. 4. 34. 39 H. 6. 40. If Process goeth out Coronatoribus, and there be four Coroners, by some opinions any two of them may serve and execute, or return the Process; for the plural number Coronatoribus is observed: but one of them alone cannot execute or return such Process: Br. Ret. 42. See Co. 4. 46.

And yet by the book 31. Aff 20 Br. Officer 22. the return must be by all four: and according to the opinion of that book, Mr. Stamf. fol. 53. saith, that although in one County there shall be many Coroners, yet it is not needful to have above one in the enquiry super visum corporis: And also that in giving Judgment upon an Utlary, it sufficeth if it be given by one; Also that in Redisseisin it sufficeth to have two Coroners: But where Process is to be awarded to them, there all the Coroners within the same County ought to serve the same, or otherwise it is not good, for that they do this as a Minister, and not as Judge as they do in the other cases; And so also was the opinion of Hank, 14 H. 4. Br. Reto. 42. See Fitz. Reto. 15. 18. And yet if three of the Coroners die, the fourth may execute and return the Process until more Coroners be chosen. Co. L. 181. b.

Br. Ret. 42. 14 H. 4. Where process goeth out to the Sheriffs of London or York (there being two Sheriffs) and one of them return the Writ alone, it is not good, although the other be dead; for then there are no Sheriffs; and when the Law giveth authority unto two persons, one alone cannot execute it. Co. 4. 46.

And yet it is used that one of them doth serve the writ, and that is the serving of them both; but when it is returned, that must be in the names of both of them: 31. Aff. 20. Br. Officer 22.

Upon a suit against the Citizens of York, the Venire facias was awarded to the Sheriff of the County, for that the Officers of the City were Citizens. Dyer 279.

Br. Process 155. For favour in the Under-sheriff (sc. where he is of kindred, &c. to either party) that being alledged, the process shall be directed to the High Sheriff, with this Clause (as it seemeth) that the Under-sheriff shall not meddle: And so where the Under-sheriff is a party. 18 Ed. 4. fol. 3.

Br. Process 58. 71. But if both the Sheriff and Coroners shall be found partial or faulty, *Al Eslis* then the process shall be directed unto certain other persons to be chosen or named by the Court, which persons upon a Venire facias to them directed, shall make and return the pannel, and after the return thereof, they shall serve and execute all other the process which shall follow thereupon, as the Sheriff himself should have done if the process had been directed to him: See 15 E. 4. f. 24. Bro. Chal. 69. & 4 H. 7. 3. 14 H. 7. 31. 8 H. 6. 12. & Finch. f. 60. Co. L. 158.

Que serra Triers, & quot, & que poiet estre alter. Vide Co. L. 158.

Sir John Fortescue (sometimes Lord Chief Justice, and after Lord Chancellor to King Henry the Sixth) writing hereof saith, If the Sheriff shall return a favourable pannel, exception may be taken thereto by either party, &c. which exception if it be found true by the Oath of two of the same pannel (chosen thereto by the Justices) then the pannel shall be quashed; and then the Justices shall write to the Coroners of the same County, that they make a new pannel; and if that be found faulty, that shall be also quashed; and then the Justices shall chose two Clerks of the same Court, or two other persons of the same County, who in the presence of the Court, upon their oaths, shall make an indifferent pannel, which pannel shall not be challenged by either party: And yet exception may be taken by either party, to the poll or person of any of such pannel, as to say that he is cousin, &c. to the other party, which being found, such person shall not be sworn. Vide Co. 9. 33. a. Co. L. 158.

Also in a place exempt out of every County (as the Palace of Westminster is) there the writ shall be directed to the Gardian or Keeper of the Palace, for he is there the immediate Officer to the Court, and in nature and stead of the Sheriff. Finch. 52.

Evesque. Sometimes also process shall be directed to the Bishop, &c. as where the defendant is named or returned to be Clerk, Non habens laicum fœdum, there a Venire facias Clericum shall go to the Bishop, and by vertue of this writ, the Bishop shall sequester the Benefice of such Clerk, to compel him to appear and answer, and must also warn his person to keep his day, &c. and if the defendant cometh not in at this day, a distringas Episcopum shall go out to the Sheriff, to cause the Bishop to make his Clerk to come in: and thereupon may the Bishop sequester all the benefices of the defendant, and shall answer to the King for the issues thereof, &c. Br. Process 14. 62. 64. & 127

But if the Bishop be a party to the suit, there the Process shall be directed to the Metropolitan: See 34 H. 6. fol. 29. Br. Ret. 118. & Dyer 153. And sede vacante of the Metropolitan, the Process shall be directed Gardiano Spiritual. Archiepisc. Dyer 77.

Nota que sur issue al Common Ley de matter in fait, que est chose Spiritual, (come Bastardy, excommengement ou tiel) le Trial serra per certificat del ordinary, & ceo son certificat fist fine del matter, & n'est traversable. 7 E. 4. 14. Co 7. 14. & 9. 31. Finch. 141.

Ceo pur matters spiritual, L'ordinary est le officer al Court. Et certifie excommengement, & touts spiritual matters doet estre fait per L'ordinary, & nemy per le Commissary, Archdeacon, ou ascun auter, coment que il ad un immediate jurisdiction, si non que il soit specialment admit un Officer a le Court. 8 H. 6. 3. 7. c. 4. 14. f. 238.

Bastardy being pleaded in an Assize, a Writ went out to the Bishop to certifie, &c. who certified the party to be *Mulier*, reciting the Writ word by word, but did not send the Writ with the Certificate, and for default of sending the Writ, the Certificate was adjudged void: 41. Ass. 19. Br. 81.

Excommunication

Excommunication being pleaded in disabling of the plaintiff, it ought to be certified by the Bishop (who also is the immediate Officer to the Court) and such certificate ought to comprehend specially the cause of the Excommunication, &c. that the Judges may judge thereof, &c. But this may be pleaded (being shewed under the Bishops seal) without any Writ to the Bishop to certifie the same: Co. 8. 68. & Lit. 201.

Also upon a recovery in a Quare impedit, the Writ goeth out sometimes to the Bishop of the Diocess, and sometimes to the Dean and Chapter (as Gardians of the Spiritualties, sede vacante Episcopatus) to admit or remove the Clerk, &c. Vide Dyer 241. 200. & 350.

Et nota quant al choses spiritual, L'ordinary est le immediate Officer al touts Courts le Roy, &c. pur server le proces; le queux serra per L'ordinary, & nemy per son Commissary, Archdeacon, ou ascun (coment que il ad immediate jurisdiction) sil ne fuit specialment admit un Officer al Court. 7 E. 4. 14. 12 E. 4. 15. 8 H. 6. 3. & Finch. 141.

Auxi pur al matters queux concerne Revenue del Roy, Lescheator de chescun County est l officer al Chancery & Eschequer, a que touts le proces pur tiel matters serra direct. Finch. 78. Co. 4. 57.

Also in some cases the Constable or Lieutenant of the Tower shall receive and execute the Kings Writs; as where the Mayor and Sherifs of London be faulty, &c. See the Statute of 28 E. 3. c. 10. & 1 H. 4. c. 15. *Al Lieutenant del Tower.*

Sometimes Writs shall be directed to the Justices, &c. as Writs of Error to the Justices, &c. before whom the Judgment was given. And Writs of Audita querela, to the Justices before whom the Plaintiff is to have remedy: And Writs to the Justices to pass a fine of land to be Amortised. Dyer 188. *Al Justices.*

Thel. 107. Sometimes Writs shall be directed to the Lords of whom the lands are holden: Plo. 74. Sometimes to Stewards, Mayors, Bayliffs, or other Officers of Mannors, Cities, Boroughs, or Towns, within which the lands do lie. *Al Seigniors.*

As every Writ which concerneth any Freehold tenant in London, ought to be directed to the Mayor and Sheriffs of London. But all other Writs which are at the Common Law within the same City, ought to be directed to the Sheriffs only. Old N. bre. 4. 5.

And sometimes Writs shall be directed to the parties themselves of whom complaint is made, as the Writs of Monstraverunt, de ne injuste vexes, de Estre pemento sometimes, and sometimes Writs of Prohibition, &c. Vide plus Dyer 241. pl. 48. & 266. pl. 8. *Al parties.*

2 E. 3. c. 5. Cromp. 203. Sheriffs and Under-sheriffs shall receive all manner of Writs in any place, and at all times within their County, when and wheresoever they shall be delivered them, without taking of any thing other than such fees as the Law alloweth, and shall make thereof Warrant. *Delivery of Writs.*

And when a Writ is delivered to the Sheriff to execute, he ought to receive it, and not to deliver it to the party that delivered it to him back again, but must execute it, and then return the same into the Court from whence it came; for he is so commanded by the Writ; And if he doth not so, upon complaint thereof, the Court will set a a fine upon his head, per Anderson, ter. Pasch. 36 Eliz.

An Exigent which was delivered of Record (to the Sheriff) was imbezelled, and the copy thereof was retorned by the Sheriff; And he was amerced for the return of the copy, at 30 l. and for the imbezelling thereof, at 20 l. 5 H. 4. fol. 5.

If any man doth fear the malice, indirect dealing, or negligence of the Sheriff, &c. in the execution of any Writ, they may deliver their Writs in the open County Court, or in any other place in the County, and may take of the Sheriff or Under-sheriff being present a bill, wherein the names of the Demandants and Tenants mentioned in the Writ shall be contained, whereto upon request made by him which delivered the Writ, the Sheriff or Under-sheriff shall put to their seal for a testimony, without taking any thing therefore, and mention shall be made therein of the day of the deliverance of the Writ: and if the Sheriff or Under-sheriff shall refuse to put to seal to such bill, others that be present shall set to their seals to such bill for witness thereof. W. 2. c. 39. & 2 Ed. 3. c. 5. P. Ret. 1.

Nient Return. And if the Sheriff or Under-sheriff make not a due return of the said Writs delivered or offered unto him, upon complaint thereof to the Justices of the one Bench, or of the other, they are to make a judicial Writ to the Judges of Assize, to enquire thereof, by vertue whereof the Justices of Assize shall have power to enquire thereof, by those that were present when the Writ was delivered, &c. And if the Sheriff be found in fault, then upon Return thereof into the Bench, &c. he shall be punished, and shall yield damages to the party grieved (having respect to the quantity and quality of the action, and to the peril which might have chanced unto him by the delay which he suffered:) See the Book of Assizes, Lib. 29. pl. 58. Br. return de breve 72. & Officer 40. Abr. d'Ass. 137. 13 E. 1. 39.

Yea the Justices of Assize have power to enquire thereof at every mans complaint, and to award damages, ut supra, 2 E. 3. c. 5.

Trade. Also by this means remedy may be had when the Sheriff shall not execute the Writ; or shall return untruly that the Writ came too late, whereby he could not execute the Kings commandment, when as he had sufficient time to serve the Writ: 13 Ed. 1. cap. 39. Abr. d'Ass. 137.

Faux Return. And the like remedy is given when the Sheriff, &c. shall make any other false return of any Writ (whereby right is deferred) and the offendors making any such false return, shall yield damages to the party grieved, ut supra, 28 E. 1. c. 16.

And so if the Sheriff shall return Mandavi ballivo libertatis, where there is no liberty. Kitch. Retorn. 44.

Also

Also the like remedy is given, when the Sheriff shall Retorn too small issues, &c. Abr. d'Ass. 115. & 137. & 19 H. 6. fol. 8. See the p... Retorn of issues.

CAP. 21.

ALL Writs and Process directed to the Sheriff, are usually deli- *Qui execut*
vered to the Under-sheriff, and executed by him.

Lamb. 91. And yet the High Sheriff may execute them himself; Or the High Sheriff may command his Under-sheriff, Baylift, or other sworn or known Officer to serve or execute them, and such commandment of the Sheriff by word only is good, without any precept in writing. Keilw. 86. 9 E. 4. 48. 21 H. 7. 23.

21 H. 7. 23. a. But if the Sheriff will command another man (that is no sworn or known Officer) to serve or execute any Writ, Process, or other Warrant, the Sheriff must deliver him the Writ it self, or else a Precept in writing, otherwise an action of false imprisonment will lie for the arrest, Lambert 91. 21 H. 7. 23.

Keil. 85. And yet the Sheriff may command his servant by word only (without any Precept in writing) to serve or execute any Process and it is good: and so any stranger by the commandment of the Sheriff, and as a servant to the Sheriff, may justifie to serve and execute any Process upon the body or goods of another, or to seise the goods of any person that is outlawed, &c. and that without any Precept or Warrant in writing: See Br. Faux. Impr. 43. & Trespass. 339.

If the Writ or other Process cometh to the Under-sheriffs hands, he must either execute it himself, or else must make his Warrant in writing to the Bayliffs, and such Officers, and that in the High Sheriffs name: or he may make such Warrant to any stranger. *How to be executed.*

The Bayliff or other Officer to whom any Warrant shall be directed and delivered, ought with all speed and secrecy, to execute the same.

If the High Sheriff (or Under-sheriff in the High Sheriffs name) upon any Writ or Process to them directed and delivered, shall direct their Warrant to their Bayliffs, or any other such Officer (to arrest one, or otherwise to execute such Writ or Process) such Bayliff or other Officer must serve or execute it himself: for these can command none other to do it neither by word nor writing. Lamb. 91.

And so it seemeth if the High Sheriff shall direct his Warrant to his Under-sheriff, the Under-sheriff must execute it himself, and can command none other to do it.

Note that none shall be arrested for debt, Detinue, trespass, or other cause of action, but only by virtue of some Process, Precept or Commandment out of some Court.

Uncore per le custome de London, *sur Pleint, ou Suite pur debt la enter devant les viscounts. Les Serjants poient arrest le Debtor per le commandment del visc. (per parol tantum, sans ascun Process ou Precept in Escript) de appeare & respond. al mesme suite; & ceo ils sont per Prescription.* Vide lib. Intrac. tit. Trespass in Process, div. 4. vide hic c. 22.

Posse comitatus Note that the Sheriff, Under-sheriff, Bayliff, or other such Officer may (if need be) take posse comitatus, sc. what number of other persons they shall think good to execute any Writ, Process, or other lawful Warrant to them directed; and such as shall not assist them therein being required, shall make fine to the King. See hic postea cap. 95.

A Warrant directed (by the High Sheriff, or Under-sheriff) to the Bayliff or other sworn Officer) and to a stranger (or special Bayliff, who is no sworn or known Officer) and the warrant is made to them, conjunctim & divisim, and is executed by the stranger only, this is good.

A Warrant is directed to two men joyntly to arrest another, yet either of them alone may do it: Lamb. 91. Co. L. 181. Vide.

The forms of Warrants to be made upon mean Process: See hic postea, cap. 23.

Not to dispute the Authority. The Sheriff nor his Officers are not to dispute the authority of the Court, from or out of which they shall receive any Writ, Process, or other Warrant: but they at their peril are truly to execute all Writs, Warrants, Process, and Precepts of the Judges, Justices, or Court to them directed, and that according as the same writs, &c. shall command, in every behalf; and to this also they are sworn: And therefore whereas there was an information preferred in the Star-Chamber (termino Michaelis Anno 3 Jacobi Regis) by the Attorney-General, against divers Serjeants of the Peace, and others, for arresting the body of Isabella Countess of Rutland, by force of a Capias ad satisfaciendum, upon a Judgment in debt given in the Court of Common Pleas against the said Countess; it was resolved for good Law (by Egerton Lord Chancellor, Popham and Gawdy Chief Justices, Fleming Chief Baron, and by all the Court of Star-Chamber) that the Sheriff, or his Officers by his warrant, without any offence (of Law) might execute the said writ upon the body of the said Countess: And although it appeared in the Capias that she was a Countess (against whom by Law no Capias in such case lieth, Et quod ignorantia Juris non excusat:) yet for as much as in some cases, (as in cases of contempt, &c. a Capias doth lie against a Countess (or against any Peer of the Realm, &c.) for that cause it was there resolved, that the Sheriff and his Officers or Ministers ought not to examine the judicial act of the Court, but ought to execute the writ. Co. 6.54. 9.68. & 10.70. & D. & St. 150.

And with this agreeth the opinion in 36 H. 8. Dyer, fol. 60. that if a Capias (in an action of debt) or an Exigent, or a Writ of execution, shall come to the Sheriff against a Duke or Earl, &c. whereas it lieth not against such persons, yet the Sheriff ought to serve and execute such Writ or Process, and not to argue and dispute the validity thereof: See Co. 9. 68. & 10. 70. & 76. b. accordant.

Capias ne gist vers Peer del Realm (in action de trespas, ou dett, &c.) Mes vers un Chevaler gist: Car home poet estre Chivalier que n'ad frankten ment, mes tantsolement en un County. Mes si Peer del Realm (sc. Countey, ou Baron) n'ad ascun chose in le County ou il est sue, le party Plaintiff avera un Elegit sur testatum in ascun County lou il ad Assets: Auxi sur contempt, come Rescous, ou tiel, Capias gist vers Peer del Realm, car ceo est pur le disturbance del Ley. 1 H. 5. 14. 26 H. 8. 7. 27 H. 8. 12. Finch. 103.

Auxi coment que le corps d'un Peer ne serra, prise sur Capias in Proces, pur ceo que Ley intend que il ad Assets, &c. uncore semble que son Corps poet bien estre prise in execution sur un Statute, s'il n'ad bienz ne terr extendable; Car les parols del Statute Merchant fait. 13 E. 1. *apres que il ad done brief pur les terres, & bienz del debtor, ad auxi ceux parols & s'il n'ad dont il avera brief a quel vicount il voile, de prender son corps s'il soit lay, & de retain. ceo, &c. per queux parols nul Noble home est exempt, s'ils sont lay homes, & issint les Justices semble de agreee in le case del Seignior Mountjoy,* in Communi Banco. Anno 29 Eliz.

Upon an Original Process for debt, trespass, or the like, no Knight, nor Burgess of the Parliament, nor any of their necessary servants attending upon their Masters, during the Parliament, ought to be arrested: Neither shall any of their goods or chattels necessary, be attached or taken by any Sheriff or other Officer (except it be in case of Treason, or Felony.) Cromp. author. des Courts, fol. 11.

A Knight, or Burgess of the Parliament, nor any of their necessary servants or attendants shall not be arrested upon a Writ of execution, or the like; And if any such priviledged person shall happen to be taken upon an execution, during the Session of the Parliament, they shall have the priviledge of the Parliament, and the Sheriff may, nay ought to deliver such prisoner, being sent for by the House: But yet upon a Capias utlagatum, they may be arrested, during the Session of the Parliament. See plus hic cap. 20. & 126. & 29.

Clergy-men called to the Convocation, &c. And their servants, shall have the priviledges, eundo, morando, & redeundo, which the Peers and Commons of the Realm in Parliament have, Stat. 8 H. 6. cap. 1 Finch. 140.

But if any Writ or Process shall be delivered to the Sheriff, against any of these persons thus priviledged, or against their goods, and the Sheriff or his Officers shall execute the same, and after shall readily deliver the party again, or his goods (so taken) when he shall receive any Writ of Priviledge, or other Command from the House of Parliament so to do, quære if this shall not excuse the Officer; or that the execution of such Process upon such priviledged persons be altogether unlawful; it seemeth no excuse. See hic cap. 126.

Dyer 60. And yet a Burgess of the Parliament was taken, arrested, and imprisoned by the Sheriff upon a Writ of Exigent, which issued upon a Capias ad satisfaciendum, and after a Writ of priviledge was granted from the Parliament; whereupon the Sheriff let the prisoner go at large; and it was holden that the priviledge was grantable, notwithstanding the execution; for that the King and the Realm have interest in the body of every Burgess (and other member of the Parliament)

and the Common-wealth shall be preferred, and the party may be afterwards taken in execution again: but admitting that a Writ of Priviledge had not been grantable in this case, yet it was holden that the Sheriff should not be charged for such his letting of the prisoner go, he being commanded thereto by authority of Law, and not done of his own head only; and besides, he is bound to execute all process of Law, as well by his Oath, as by his Office: and the Sheriff is not bound to take * notice of the Law; for the Law intends him to be a Lay-person, and not to have knowledge of the Law: so that whereas a Writ shall come to him by authority, or without authority, he may not argue or dispute it: and therefore if a Capias shall come to the Sheriff without any original, and he shall serve it, he is excusable in an action of false imprisonment; for the Sheriff being the Officer and Minister of the Court, it shall be against reason to punish him for executing the Process and Commandment of the Court; and the rule is, Quicunque jussu Judicis aliquid fecerit, non videtur dolo malo fecisse, quia parere necesse est: Co. 10. 70. Vide 1 Jac. c. 13. P. Executio. 4. * Yet in some cases the Law is otherwise: see *fol. sequent.*

If the Court or Justices shall award a Process to the Sheriff, to arrest or take another without cause, and the Sheriff (or his Officers) shall thereupon arrest him, the Sheriff nor his Officers are not punishable for this; yea although the Justices shall after amend their Process; yet the Sheriff, &c. shall be discharged. 20 H. 6. 5.

And yet this difference is to be taken: sc. when a Court hath jurisdiction of the cause, and shall proceed inverso ordine, or erroniously, there the Officer or Minister of the Court, which shall execute the Precept or Process of the Court, is excusable, so as no action will lie against him: But when the Court hath no jurisdiction of the Cause, there all the proceeding is coram non Judice, and therefore there an action will lie against the Officer, without any regard had of the Precept or Process of the Court: And as to the former Rule, Quicunque jussu Judicis aliquid fecerit, non videtur dolo malo fecisse, quia parere necesse est, the Law well alloweth thereof; But when he hath not jurisdiction of the Cause, non est Judex, and it is not of necessity to obey him who is not Judge of the Cause, no more than it is to obey a meer stranger; for another Rule is, Judicium à non suo Judice datum, nullius est momenti; And accordingly in 22 Edw. 4. fol. 33. Pigott saith, That if the Court hath not power and authority (in the Cause) then their proceeding is coram non Judice. Co. 10. 76.

Come si les Justices del Court del Common Pleas, sur preier d'ascun person, hors de lour Court, fera ascun Process de arrest un auter pur suerty de le Peace; ou deins lour Court fera ascun tiel proces de arrest le party deins le County, lou le Court de Common Pleas est, ou de arrest un pur trove suerty del Peace, que nest present in Court, ne deins lour view, semble que l'officer n'est de server ou execut. tiel proces, pur ceo que lour authority in tiel cases, est tantum deins le precinct de lour Court.

Issint si les Justices de Common Pleas voile tener plea de Appell. &c. Vide Keilw. 106.

Issint si les Justices de Common Pleas, ou d'ascun auter Court, grant. ascun Precept, &c. concernant ascun auter choses, de que ils ou lour Court, n'ont Jurisdiction.

Issint

Issint quant un action est commence devant un Judge, sil soit Judge de ascun parcel de ceo que est sue devant luy, le judgement n'est my void, pur ceo que de parcel il avoit power de tener plea: Mes lou le Judg tient plea de tiel matter, que de nul part il avoit power, & donc Judgment sur ceo, est come un void Judgment in Ley, & donque chescun que est fait per cause de ceo, est un trespass ou disseisin, come le case est. Keil. 106.

Also by the book 22. Ass. pl. 64. it is holden, that where an erroneous Judgment is given in any Court, the Officer which maketh execution is excused: but contrariwise, where the Court giveth Judgment of land, contract, or the like, which lieth out of their jurisdiction, as where an action is brought in a Court, of land, which lieth out of their jurisdiction, or of a contract which was made out of their jurisdiction, and the demandant or plaintiff recovereth and hath execution, there an Assize or an action of Trespass will lie against the Officer, &c. which maketh the execution; for all the proceeding is coram non judice. Vide tiel matter Keil. 106.

Webb *versus* Bachellor & *versus* Pas, 29 *Car. Secundi Regis in Banco Regis, sur special Verdict.*

Also by the book 14 H. 8. 16. if a Justice of Peace shall make a warrant to arrest one for Felony who is not indited, the Justice doth erre in the granting of such a warrant; and yet if the Bayliff, Constable, or other Officer shall serve such a warrant, this is a good justification of the Officer in an action of false imprisonment (notwithstanding the Justice did erre in making the warrant) for the Justice of Peace is a Judge of the Cause.

Mes si Justices de Peace arreigne un home de Treason (a le Sessions) que est trove culpable, & sur ceo pendus, ceo est felony, cy bien in les Justices, come in le viconnt, (ou auter Officer) que luy suspend. Car les Justices de Peace n'ont Authority in ceo; mes fuit coram non Judice: Mes si les Justices de Peace arreigne home de felony, sur un Indictment de trespass, sur que l'offender est pendus, ceo est felony in les Justices, mes nemy in le vic. ou Officer, que luy pend, pur ceo que les Justices de Peace ont Authority & Jurisdiction in ceo darein case.

14 H. 8. 16. The same Law is where the Sheriff doth erre in his warrant directed by him to the Bayliff of a Franchise, or to his own Bayliff. Br. Faux Impris. 8.

24 E. 3. 9. So upon a Commission from the King granted out for the arresting of any person, though it should be against the Law, yet the Commissioners, or those to whom the Commissions shall direct their Precept or Warrant (for arresting of any such person) may execute and justifie the same. Br. Faux Impris. 29.

But upon an action of false Imprisonment, where the defendant justifieth, as Sheriff of C. and that he arrested the plaintiff by force of a Capias, &c. this is a good plea, so as he pleadeth that this was the same imprisonment. Br. Faux Impris. 29.

And so note that in some cases the Sheriff, or other Officer, is bound at his peril to take knowledge of the Law; as in the cases aforesaid, where the Court, Judge, or Justice, having no Jurisdiction of the Cause, shall grant out any Process, Writ or Warrant, &c. and the Officer shall execute the same, &c. for in such cases, Ignorantia juris non excusat ministros Legis.

The Officer to take knowledge of the Law.

Un fuit attaint de disseïn, ove force, per que Exigent issint, quel brief le vic. retorne, & que le Roy luy maund per brief south son Privy Seal que il avoit luy pardon le trespass & imprisonment, & command que ne soit endamage pur ceo cause, & issint ad rien fait pur reason de ceo commandment le Roy; & retorne auxi le brief le Roy; & pur ceo que cel brief doit aver estre maunde al Justices, & il doient aver command le vicount que il surcessera, Ideo le vic. fuit amerce, & novel Exigent agard. Car le vic. ne poet per nul brief (per le Ley) surcessera, forsque per garrant del Court, ou Liew, hors de quel il avoit le Commandment. Quod nota 14 E. 3. Fitz. Reto. de vic. 89. & 4 E. 4. t. 17. Plus hic c. 29. & 59.

Also if a Writ de homine replegiando cometh to the Sheriff (which Writ commandeth the Sheriff to make deliverance of the body, except the prisoner be in, per speciale præceptum nostrum, vel capital. Justic' nostri, vel pro morte hominis, vel pro foresta, vel pro aliquo alio recto, quare non sit replegiabilis:) yet the Sheriff shall be amerced if upon that Writ he delivers a prisoner which is in for Redisseisin, without special commandment. See Statute Marl. c. 8. Fitz. Natura Brevium 189. c. Dyer 60. 61. Fitz. 66. f.

And so of a prisoner (or an Accomptant) found and condemned in arrerages before auditors, and committed by them to prison, if the Sheriff or Gaoler shall deliver him upon a Writ de homine repleg. or otherwise, without the assent of his Master, it is an Escape, and the Sheriff, &c. shall pay the debt, &c. whereas at the Common Law before this Statute of Westm. 2. the Master had no remedy, but his action *sur le case*. West. 2. c. 11.

The words of this Statute of Westm. 2. to this purpose, are thus, Sit hujusmodi incarceratus irreplegiabilis (sc. *sans licence ou assent le Seignior.*) Et caveat sibi Vicecomes, vel custos ejusdem Gaole, (sive sit infra libertatem, sive extra) quod per Commune breve quod dicitur Replegiare, vel alio modo, sine assensu domini, ipsum à prisona exire non permittat, Quod si fecerit, & super hoc convincatur, respondeat domino de dampnis per hujusmodi servientem sibi illatis, secundum quod per patriam verificare poterit, & habeat dominus remedium suum recuperare per breve de Debito versus custodem. Et si Custos Gaole, non habet per quod Justicietur, vel unde solvat, respondeat superior suus, qui custodiam hujusmodi Gaole sibi commisit, per idem breve: *Et nota que il. serra charge de tant que l'accomptant fuit trove in arrerages devant les Auditors.*

Et uncore sur brief de ex parte talis, retornable in l'eschequer, le vic. poet deliver tiel prisoner, ou poet baile luy, accordant come le brief serra, vide Dyer 61. & Fitz. 129. g. i. & 130. a. *Mes nota que le Suerty in Ley ex parte talis serra al profit le Roy (& les mainpernors serra oblige sur un paine, que ils luy garder son jour, &c.) mes le Seignior semble icy sans remedy, cy bien vers le vic. ou Gaoler, come vers le baily: Car le vic. ou Gaoler est discharge per ceo brief le Roy; & le baily luy discharge adire que il auter foits accompt devant Auditors assignees, &c. & monstre tout le matter, & que il fuit comit. al prison, & ceo matter monstre discharge le baily; tamen quære inde.*

Auxi nota que le suerty que serra prise sur brief de ex parte talis, poet estre prise in le Chancery, ou in le Eschequer; Et in ascun case serra prise in le pais, per ou devant le vicount. Fitz. 129. 130. & Old Nat. bre. 60.

Mes

Mes nient obstant que ceo Stat. de Westm. 2. *voet que le Accomptant ne serra mise al baile per breve de Homine Repleg. vel alio modo, uncore semble que ceux parols serra prise strict. Car sil ad privilcdge del Parliament, ou soit d'estre execute pur Treason, ou Felony, ou forsque d'estre arreigne de ceo, il serra deliver, & le vic. & Gaoler serra discharge.*

Mes semble que il nest plee pur le vic. ou Gaoler, adire que il lessa le baily de aler per assent del Seignior sil ne monstre fait le Seignior provant cel assent.

Auxi si le Accomptant soit sue, & soit utlage, & apres il est prise & mise en prison en le gayle, donque il est replevisable, Old Nat. bre. 58.

As for the Kings Protection granted to any of his Subjects by his Writ, whereby any immunity or freedom from actions, suits, or arrests shall be given to any of them; it is to be noted, That the Courts of Justice where any such Protection is cast, are to allow or disallow of the same, (be they Courts of Record, or not of Record;) But the Sheriff nor any other Officer or Minister are to allow or disallow the same. Co. L. 131. a. *Protection.*

Also note that by the death of the King, the authority of the Sheriff, and of all his Officers, doth determine and cease, vide hic c. 2.

But yet by the Statute 1 Ed. 6. c. 7. it is provided that by the death of the King, no action, suit, bill, or plaint depending between party and party, in any Court of Record, shall in any wise be discontinued, &c. So that now, if any Judicial Writ or Process in any Court of Record be awarded in the time of the precedent King, this now may be executed by the Sheriff, or his Officers, in the time of the succeeding Prince, &c. Vide Co. 7. 30, 31.

CAP. 22.

The Officers Duty.

The Sheriff or other Officer to whom any Writ or Warrant shall be directed and delivered, ought with all speed and secrecy, to execute his said Writ or Warrant according as the same commandeth: and besides, he is bound to pursue the effect of his Warrant in every particular, or otherwise his Warrant will not excuse him. 21 H. 7. 23. a.

In an action of Debt, Trespass, or the like, where the Sheriff is to summon, attach, or garnish the defendant, he must do it presently; and therefore if in such cases the Sheriff shall return Nihil habet, without saying Nec habuit die receptionis brevis, or nec habuit post receptionem brevis; yet it shall be intended that the Sheriff endeavoured the execution thereof presently, sc. the day of, or presently upon the receipt of the writ. See hic c. 56. & 77.

Note

Note that Writs concerning Common Pleas, are some real, and some personal; and they both again, are either Præcipes, or else Si fecerit te securum.

Præcipes are of two sorts, sc.

1. Præcipe quod reddat, which lieth for things in render, as of land, rent, &c. or money, goods detained, and the like.

2. Præcipe quod faciat, or quod permittat, as the Writ de Consuetud. & servitiis, Sect. ad molendinum, &c.

And upon these Præcipes, the Sheriff is to command the defendant to do somewhat in certain which the plaintiff sueth for, which if he do not, then the Sheriff is to serve the Process.

But upon a Si fecerit te securum, the Sheriff is to serve the Process without more ado. Finch. 257.

If the defendant doth the thing commanded by the Præcipe, yet the Sheriff is to serve the Process, and to make return thereof as it seemeth. See hic c. 56. 70.

Shew the warrant. A sworn and known Officer (be he Sheriff, Under-sheriff, Bayliff, or Serjeant) needs not to shew his warrant or writ, when he cometh to serve it upon any mans person, or goods, although the party demandeth it: but a special Bayliff, or other person who is no sworn and known Officer, must shew their Warrant to the party, if he demands it, or otherwise the party may make resistance, and needs not to obey it. Co. 9. 69. 21 H. 7. 23. & 37.

And so of the Sheriffs servant, or Under-sheriffs servant, being no sworn Bayliff, they cannot arrest a man without shewing their warrant, if it be demanded.

And yet no special Bayliff is bound to shew his warrant without demand thereof. 8 E. 4. 14. 14 H. 7. 9. Co. 9. 69.

But every Bayliff and other person that will justifie the imprisonment of the body of any other, by force of any warrant, must shew the same warrant in Court, &c. And therefore it behoveth all Bayliffs, and other such Officers, to keep safely by them all such their warrants. Co. 10. 92.

Or declare the contents. A sworn and known Officer, if he will not shew his warrant to the party (as he needs not) yet upon the arrest the Officer ought to declare the contents of his warrant, (sc. at whose suit he maketh the arrest, for what cause, out of what Court, and into what Court, and when it is returnable) to the end, that if it be upon an Execution, the party may pay the money, and so free his body from imprisonment; and if it be upon mean Process, that the party may either agree with the other, or else that he may put in Sureties and bail for his appearance according to Law, and to know the day of his appearance. Co. 9. 68, 69. & 6. 54.

But this (sc. that the Officer upon the arrest ought to declare the Co. 9. 69. a.
contents

contents of his Warrant ut supra) must be understood, when the party arrested, or to be arrested, shall yield and submit himself to the arrest, and not when he maketh resistance, or flyeth.

Co. 9. 69. b. Note where our Law Books or Statutes do speak of a known Bayliff or Officer, they are not to be understood (neither is it needful) that such Bayliff or Officer be known to the party, who is to be arrested, but if he be so commonly known, it sufficeth. *Bayliff conus.*

Co. 9. 69. And an Officer giveth sufficient notice what he is, when he saith to the party, I arrest you in the Kings Name; and in such case the party at his peril ought to obey him, though he knoweth him not to be an Officer; and if he have no lawful Warrant, the party arrested may have his action of false imprisonment against him.

If the Sheriff or Officer cometh to arrest a man, and he flyeth, the Officer may pursue him, and take him again, though in another County; but may not beat, strike or assault him, for that he was not arrested; but if he were arrested and then flyeth, and draweth any weapon, the Officer may justifie to assault, batter, and take him again. 2 E. 4. 7.

14 H. 8. 16. If any Officer do arrest a man before that he hath any Warrant, and then afterwards doth procure a Warrant (or a Warrant cometh after to him) to arrest the party for the same cause, yet the first arrest was wrongful, and the party grieved may have his action of false imprisonment against the Officer: Br. Faux imprisonment 8. *Sans garrant.*

A man condemned in debt, at the request of the factor of the plaintiff, was arrested by the Sheriff for the debt, without any writ or warrant, and being in the Sheriffs custody, the Sheriffs and the plaintiffs factor do procure a Capias ad satisfac. against the prisoner for the debt, and by vertue thereof the Sheriff arresteth the prisoner again, and brings him into the Court at the day of the return, &c. and all this matter being disclosed to the Court, and found to be true, the defendant would have been discharged, but yet he was committed to prison in execution for the debt (for that the plaintiff was himself particeps criminis in this undue arrest.) And the Sheriff was amerced at 10 l. and the factor at 5 l. And besides, for the wrong to the defendant he may have his action of false imprisonment against both the Sheriff and factor of the plaintiff. Dyer 244. See other like cases. Dyer 241. 242. & 16 E. 3. Fitz. Bar. 248.

If a Serjeant in London shall attach a man before the suit or plaint be entred, an action lieth against the Serjeant: And so is it if the Sheriff, or any other Officer, shall arrest any man before their warrant come to them; and it is not excusable although that the warrant comes to them afterwards.

43 Eliz. c. 6. 1 Jac. c. 25. If any Sheriff, Under-sheriff, or other person having authority, or taking upon him to break up writs, do make any warrant for the summons of any person, as upon any writ, process, or suit; or for the arresting or attaching of any person, or persons by his or their body or goods, to appear in any His Majesties Courts at Westminster, or elsewhere, not having before that the original writ or process warranting *Sans original.*

the

the same, upon complaint thereof made to the Judges of Assize of the County where the offence shall be committed, or to the Judges of the Court out of which the Process issued, as well the party that made such Warrant, as also those that were the procurers thereof, shall be sent for by the same Judges, and be thereof before them examined upon oath; and if the same offence shall be confessed by the offendors, or proved by sufficient witnesses (to the satisfaction of the same Judges) the same Judges shall forthwith commit every of the same offenders to the Gaol, there to remain without bail until they have paid (amongst them) ten pounds unto the party grieved, and such costs and damages as the same Judges shall set down, that the party hath sustained thereby, and withall twenty a piece to the King for their said offence.

And yet where a Capias, &c. shall go out to the Sheriff without an original, and he doth execute and serve the same, an action of false imprisonment will not lie against the Sheriff; for it was not his fault, by Hank. 11 H. 4. 36. Neither is the Sheriff bound to take knowledge whether this be of Record or no: yea, the arrest thus made by the Sheriff is good, so that if the party shall make a Rescous, he shall be therefore punished; for the Capias was a sufficient Warrant to the Sheriff. M. 38 H. 8. 12 H. 7. 14. b. & 21 H. 7. 22. b. Br. Faux imprisonment 31.

Si le vic. escrye al Bayliff del Franchise in tiel forme, Ballivo libertatis, &c. salutem, Mandatum domini Regis recepti in hæc verba, & reherse coment le Roy command per brief de prender le corps d'un tiel, lou nul brief viet al vic. ceo est bon excuse al Bayliff del Franchise, & le party avera son remedy vers le vicount.

Un Attorney avoit fait un Capias direct al vic. ou la fuit nul original, per que l'Attorney fuit mise al fleet, & apres son nosme fuit treet hors del Rolls de Attorneys, &c. Vide 10 H. 6. 37.

Two men of one name. Where there be two or three known by the name of J. S. and upon Process granted out against one of them, the Officer arresteth another of them (where it is not the defendant) or attacheth the goods which are not the defendants goods, the Officer shall be trespasser; quære tamen & vide hic c. 61. and if the plaintiff had shewed the Officer the wrong man, or goods, and had told him that that had been the defendant, or those had been the defendants goods which were not, there both the plaintiff and officer are trespassers; but it is otherwise upon such information, in making of the view of land, for that is neither seisin, nor an arrest. 11 H. 4. 90. Br. Officer 8.

And yet by the opinion of the book in long 5 E. 4. fol. 51. (Br. Faux Imprif. 19. & Ident. Nom. 6.) where there be two or three known by the name of J. S. Yeoman in D. and one of them is sued, and a Capias is directed out to the Sheriff, &c. and the Sheriff taketh another of them, an action of false imprisonment will not lie; for that he that is so taken is named in the Capias, and therefore hath no remedy, but by a Writ of Identitate Nominis: But the contrary is holden in the same book, and year, fol. 84. sc. that in the former case, an action of false imprisonment doth lie against the Sheriff, &c. for that the Sheriff (or Officer) is to take notice at his peril, which of them it is that is sued. And therefore it seemeth safest for the Sheriff in such

cases to make his Return, that there be divers of that name and sirname within his County, &c. and that therefore he knew not upon which of them to execute the Writ. Vide hic cap. 61. such a Return.

Where a Warrant is granted out against J.N. the son of W. N. and the Officer thereupon arresteth J. N. the son of T. N. although in truth he be the same person that offended, and against whom the complaint was made, yet this arrest is tortious, and the Officer subject to an action of false imprisonment. See the like matter 10 E. 4. f. 12. Br. Faux Impris. 38.

Cromp. 214. If the Sheriff, &c. arresteth one upon a Capias, and after returns Non est inventus, an action of false imprisonment lieth, &c.

If an Officer hath arrested a man by vertue of a Capias, or upon a Latitat. and then giveth him a day to come to him again with sureties to be bound for his appearance, &c. and so the Officer letteth the party go, who comes not again at his day appointed, here it seemeth that the Officer cannot take his prisoner again by vertue of his former writ or warrant, for that the Officer gave the prisoner leave, &c. As where a man is in execution for debt, and the Sheriff or Gaoler licenseth him to go at large for a time, and then to return, or to go by bail or baston, and he cometh again at the time, yet this is an escape; and so it is *Escape.* adjudged in Boytons Case, Co 3. fol. 44. and in Ridgewaies Case Co. 3. f. 52. But if the party arrested (or the prisoner) had escaped of his own wrong, without the consent of the Officer, then upon fresh suit made, the Officer may take him again, and again, so often as he escapeth, although he get out of view, or that he shall fly into another County. See Br. Faux Imprisonment 18. & Br. Escape 4. 12. & lib. Intrac. tit. Faux Impr. div. 10.

Co. 3. 44.

If an Officer shall arrest another by force or vertue of a warrant of *Warrant of the* the old Sheriff, after the Sheriff is discharged, &c. an action of false *old Sheriff.* imprisonment will lie both against the Sheriff and against the Officer for such an arrest.

Cromp. 205. b.

Issint lou ascun que n'ad authority fera un Precept al Officer de arrest auter, & sur ceo l'officer arrest le party, le action gist cybien vers le Judge, &c. que fera tiel precept, come vers l'officer que cest execute.

2 H. 7. 2. Br. Retor. 83. If a man be taken and imprisoned upon a warrant from a Justice of *To arrest one* Peace in the Country, for surety of the Peace, or for some Riot, or *that is arrested* Forcible Entry, or the like, and after a Capias cometh out of the *before.* Kings Bench, or Common Place, &c. to the Sheriff to attach or arrest the same person, and the Sheriff upon the Capias returneth all this (and bringeth the prisoner into the Court) yet the prisoner shall first answer to the plaintiff, and after his answer put into the Court he shall go under bail, and then be remitted or sent back by the Sheriff into the Country, there also to make his answer before the Justices of Peace; so that the Sheriff upon a Capias to him delivered to attach or arrest such a prisoner, formerly committed to the Gaol by the Justices of Peace, is to bring such prisoner into the Court upon the Capias, as it seemeth.

Note that when a man is in the custody of the Sheriff by Proces of Law (or by force of any lawful warrant, except for Criminal matters) and after another writ is delivered to the Sheriff to take the body of him that then is and was in his custody before, now presently is that prisoner in the custody of the Sheriff by force of this second writ, and in such case if the Sheriff shall refuse to take the second writ, or shall not keep the prisoner thereupon, it is an escape in the Sheriff; and so the Sheriff in this case must be answerable for his prisoner, although he do not arrest him by the second writ. Co. 5. 89. Escape.

Where the Defendant being taken at the Kings suit upon a Capias utlagatum, or upon a Capias pro fine, shall be presently in execution for the Plaintiff. See hic postea tit. Executio sur Capias ad satisfac'.

What persons may be sued and arrested, what not.

Note that the Person of the King is so sacred, that no violent hands may in any case be laid upon him; Neither may he be impleaded or sued by action, as a common person may; But wheresoever the King shall seize any mans land, or take away any mans goods (having no title by order of his Laws so to do) the subject for his remedy in all such cases, is driven to sue unto his Soveraign by way of petition only, for that no Action lieth against the King. Stamf. de Prærog. 42. 72, 73. Vide plus f. 255.

Noble men, where they may be arrested. See hic c. 21.

Knights and Burgesses of the Parliament, (nor their servants) may not be arrested. Ibid.

Necessary Officers which attend upon the Parliament (as the Serjeant of Arms, the Porter of the Door, Clerks, and the like) shall not be arrested for debt, or the like, during their attendance, Cromp. Author. des Courts fol 11.

But note that the Parliament doth give no priviledge tempore vacationis sed sedente Curia, 2 E. 4. f. 8. Br. Priviledg. 56.

And such persons whose attendance is necessary in any of the Kings Courts at Westminster, shall not be arrested: As the Judges, nor any of their necessary Servants, or Ministers of the Court. Cromp. Ibid.

If any Officer, Clerk, or Attorney of any of the four ordinary Courts who ought to be attendant to the Court, shall be arrested, during the time of their attendance, they shall have a Writ of priviledge. Dyer 287.

Every other person who hath any suit in any of the Kings Courts at Westminster, shall be discharged of any arrest, either of his body or goods which are necessary for the maintenance of the suit; *mes ceo serra per brief de priviledge que ad en luy un Supersedeas*. Finch. 52.

Concerning Ecclesiastical persons Mr. Bracton, lib. 5. cap. 32. saith thus; Excusari poterit vicecomes propter privilegium clericorum, ut si preceptum domini Regis habuerit de attachiando aliquem qui clericus sit,

sit, & qui plegios invenire noluerit propter privilegium clericale, nec laicum feodum habuerit, per quod possit distringi, nec debet dominus Rex manus in eos mittere, &c. Nullum aliud superit remedium, nisi quod ex parte domini Regis mandetur Ordinariis loci, sicut Episcopis, &c. quod faciant talem Clericum venire ad talem diem, nisi forte testatum est quod talis Clericus habet laicum feodum, & Catalla in laico feodo per quæ distringi possit, & vicecom. per fraudem mandaverit quod nihil habuerit, in quo casu vicecom. in man. domini Regis remanebit, &c.

Herewith other books do agree, &c. that the bodies of Ecclesiastical persons were not to be arrested in suits between them and other Subjects; and therefore in cases of debt, trespass, and the like, a Venire fac. Clericum was awarded 32 H. 6. 11. per Prisot, (otherwise it was in cases of Felony, or for Contempts. See 21 E. 3. & 10 H. 4. Fitz. proces 50. 198.) & Fitz. 131. a. 266. ab.

But where the first original Proces is to attach or distrain the defendant, there if he be a Clerk, he must be summoned by his person, or by his land if he hath any lay fee, Finch. 135. and yet in Debt, Trespass, and the like cases, where a Capias lieth, there it seemeth a Capias is awarded against them of common course, and then their bodies may be arrested, &c.

And note that every Subject of this Realm for any injury done to him, in his goods, or lands, or to his person, may sue any Subject, be he bond or free, woman or infant, Religious person, or be he outlawed, excommunicated, or any other without exception; for by the Statute of Mag. Chart. c. 29. Nulli negabimus aut differemus justitiam vel remedium. Dyer 104.

By which words now every man for any injury or wrong done to him, may have a writ of course in the Chancery against any other subject, without suing to the King for it, and without any fine to be made for it. Dr. St. 18.

50 E. 3. c. 5. 1 R. 2. c. 15. See Stat. 1. Ma. cap. 3.

By a Statute made in 29 *Car.* 2. all Arrests upon *Sundays* are made void, the Offenders punishable.

But if any of the Kings Officers, or other person, do arrest any Minister, or other person, which is doing any Divine Service in the Church, Church-yard, or other place dedicated to God, he shall be imprisoned, and punished at the Kings pleasure, and further shall recompence the party arrested, but no people of the Church shall keep them within the Church by fraud or collusion. *The place.*

And yet the Sheriff or other Officer may serve Proces, and execute the Kings writ within the Church, so that it be not done to the disturbance of Divine Service. See 6 H. 4. fol. 3. & hic. Retorne de Sanctuary fol.

Note, that Dies Dominicus non est juridicus: so as the Kings Courts may not sit, or hold plea upon that day. Co. L. 135. a.

Also upon a Recovery the Sheriff may not deliver seisin upon the Sunday. So upon a Fine levied with Proclamation, if any of the Proclamations be made upon the Sunday, all the Proclamations are erroneous.

And so a Scire facias out of the Common Place, bearing date or teste upon a Sunday, it is error. Vide plus Fitz 7.

The Time. Also the Sheriff, or his Officer might formerly have made an arrest, or executed any Proces, or done any other ministerial act upon the Sabbath day, and that as well at the suit of a Subject, as at the suit of the King; for the Officer of Justice ought to execute his Office whensoever he can find the party; otherwise peradventure they shall never execute their Office, nor arrest him, quia qui male agit, odit lucem; and if the Officer shall not arrest him when he findeth the party and may arrest him, the plaintiff shall and may have his action of case against the Sheriff or Officer, and shall recover in damages, whatsoever he loseth or is indamaged thereby. But Nota, the Law is now altered by the Statute of 29 Ca. 2. which prohibits Arrests upon the Sabbath day. Co. 9. 66. 29 Ca. 2.

Night. And yet the Sheriff, nor his Officers ought not to break open any mans house in the night-time, to execute any Proces, or to do any other ministerial act: For the Law giveth no colour to break a mans house by night. Fitz. Just. of Peace, f. 10. b. for this last.

And yet the breaking of a house in the night-time, for the apprehending of Traytors or Felons, being therein; or for the arresting or pacifying of Affrayors, and keeping of the Kings Peace, seemeth to be justifiable. Also summons in a Præcipe, may not be in the night, hic cap. 31.

Upon a Capias or Latitat, &c. the Sheriff may arrest the party the same day in which the writ is Returnable, (or upon the day of appearance:) yea if after the day of the return of the writ, and day of appearance before the fourth day, the Sheriff doth arrest the party, it is good, because the first, second, third, and fourth days, be all as one day; and so was the better opinion of the book 33 H. 6. fol. 45, 46. sc. that if any man was arrested after the first day, it was good; for that no appearance shall be before the fourth day; neither is any man demandable at the first day (except in a writ of Right) neither shall any man be received to plead in any case, before the fourth day; yet the very day of return is the day in Law, and to that day the Judgment hath relation, but no Defendant shall be recorded till the fourth day be past. Co. L. 135. a. sed quære de hoc.

I have seen the report of a Case between May and Hopper, Anno 2 Jacobi Regis Rotul. 279. to this purpose; A Lattiat was directed to the Sheriff to arrest Hopper, Retornable die Lunæ proxime post Crast. Sanctæ Trinitatis (which that year was the tenth day of June) and the Sheriff upon the same day, sc. the tenth day of June, did arrest Hopper, and took a Bond of him the same day, bearing date the same day, with condition to appear Coram Domino Rege, die Lunæ proxime post Crast. Sanctæ Trinit. ad respond. &c. After the Sheriff brought an action of Debt upon this Obligation, and the Defendant prayed Oyer del Oblig. &c. and then pleaded all this matter aforesaid, and the Plaintiff did demur; and it was agreed by Fenner and Yelverton Justices, that upon the same day in which the writ was returnable, and which was the day of appearance, the Sheriff might well enough arrest the Defendant: but the doubt in this case was, what day should be understood by the day mentioned in the condition (being the same day upon which the obligation was made) for that there were no

words

words of proxime sequente. Now whether it should be taken for the day whereupon the obligation was made, or for that day twelvemonth, was the question, but it was not resolved.

Sic nota que sur jour done per Proces, le quel est touts foits le Common jour, (& nemy certein jour come Lune, Martis, &c.) le quarto die post est allow pur le jour del appearance; & issint sont touts les Entres, Obtulit se quarto die post; & pur ceo lou le brief est de appear, &c. in Octabis sancti Hillarii (ou ascun auter tiel common jour de Retorne) la le party poet appear quarto die post, & a cel intent le primier jour, & le quart jour & touts les jours mean, sont forsque sicome un jour in Ley (auterment l'ou le jour done per Proces, est jour certein come Lune, &c. ut supra, la est jour del appearance.) Vide 12 H. 4. 24. 1 H. 6. 4. Fitz. 25. c. Br. *jour in Court* 57. Finch. fol. 63. Co. L. 134. b.

CAP. 23.

Warrants upon mean Proces.

NOw for that the Sheriff having all Writs and Process directed unto him as aforesaid, and yet it being a thing impossible for him to execute them himself, sc. for him to do execution of all, therefore the Sheriff (or his Under-sheriff, to whom such Proces usually are delivered) are to make out Warrants to their Bayliffs or other Officers, for the execution of such mean Proces. *Warrants upon mesne Proc*

And these Warrants must be made according to the several natures of the writs, which for the substance will direct them therein.

And yet the Sheriff may arrest a man, when he hath a writ, without making any warrant; and so may his servant (or any other person by the Sheriffs commandment) where the Sheriff shall deliver him the writ. 21 H. 7. 23. a.

But if the Proces cometh to the Under-sheriffs hands, he must make out the Warrants in the High Sheriffs name.

The form of a general Warrant to cause a man to appear, &c.

Cantab. A. *B.* Miles vicecomes com. prædict. ballivo Hundredi de *R.* salutem. Ex parte domini Regis tibi mando quod capias *J. S. &c.* Et eum salvo, &c. ita quod habeam corpus ejus coram Justic. domini Regis apud Westmon. in Octabis sancti Hillarii ad respondend. *C. D.* de placito debiti (or transgress. according to the writ) Et hoc &c. Datum sub sigillo officii mei decimo die Aug. Anno regni domini regis, nunc Angliæ, &c. xx.

Per *A. B.* milit. Vicecom.

The

The form of a special Warrant.

Cantebr. A. B. Miles vic. com. præd. ballivo hundredi de R. nec non J. W. T. B. ballivis meis hac vice, & eorum cuilibet salut'. Ex parte domini Regis vobis & cuilibet vestrum conjunctim & divisim mando, quod capiatis seu aliquis vestrum capiat. J. S. si &c. & cum salvo &c. Ita quod habeam corpus ejus * coram domino Rege apud Westm. die Jovis prox. post. Octab. Sancti Hillar. ad respond. C. D. de pla[illegible] transgr. &c. Datum &c. ut supra.

* Note if the writ cometh out of the Kings Bench, then the warrant must be, Ita quod habeam corpus ejus coram domino Rege &c.

But if the writ come out of the Court of Common Pleas, then it must be, Ita quod habeam corpus ejus coram Justic. domini Regis &c. See plus hic c. 75.

And after the same manner, must the Return of Writs be: as upon a Fieri facias the Sheriff must Return, & Denarios illos habeo coram domino Rege, if the writ comes out of the Kings Bench: but if the writ be out of the Common Pleas, then Coram Justic. infrascript, &c. and if out of the Exchequer, then Coram Baronibus infrascript, &c.

Nota, the Warrant must always be pursuant to the Writ.

Another good form of a Warrant.

Cantebr. A. B. Miles vic. com. præd. omnibus ballivis meis (vel omnibus ballivis infra com. præd.) tam infra libertat. quam extra, necnon J. B. & C. D. ballivis meis hac vice tantum salutem. Ex parte domini Regis vobis & cuilibet vestrum conjunctim & divisim mando, quod Capiat. seu aliquis vestrum capiat. J. S. si &c. Et cum salvo, &c. ita quod habeam corpus ejus, coram, &c. ut supra. W. 14.

The last Warrant is a good form to be used upon Executions, or upon Capias utlagatum, &c.

Another plain form of a Warrant.

Decimo die Aug. Anno Domini, 1622.

By vertue of the Kings Majesties Writ to me directed, returnable Coram domino Rege apud Westm. die Jovis proxim. post xv. Sancti Hillarii &c. You shall arrest J. S. if he may be found within my Bayliwick, to answer to C. D. in a Plea of Trespass, &c. (or in a Plea of Debt according to the writ.) Datum sub sigillo officii, mei, die & anno supradictis.

Per B. A. mil. vic.

To J. P. and R. S. my special Bayliffs in this behalf, jointly and severally greeting.

If the Sheriffs warrant be directed to two men jointly, to arrest another, yet either of them alone may do it.

If

If the Sheriff directs his warrant to four or three jointly, or severally to arrest a man, yet two of them may arrest him, because it is for the execution of Justice. Co. L. 181.

The form of a Bond for appearance of the prisoner. See hic postea tit. Obligation.

See other forms of Warrants hereafter.

CAP. 24.

The nature of Executions, and of how many sorts they are, and how they are to be done and executed.

Executio est fructus finis & effectus Legis, *Co. L.* 289.

Executions are of divers sorts, and in divers manners to be executed and done, &c. *Executions.*

1 Statute Merchant } *de corps, terres, & biens.*
2 Statute Staple, }
3 Recognizance, *sur* — *de Medietate terrarum, & touts les biens : & ascun foits, del Corps, ters, & biens.*
4 Elegit — *de Medietate terrarum, & de tout, les biens le dettor.*
5 Capias ad satisfaciendum, *de corps tantum.*
6 Fieri facias, *de biens tantum.*
7 Levari facias, *de proficuis terre, & de biens.*

Execution in our Law signifieth the last performance of an act, as of a Judgment, Statute, or the like: and these Executions are of two sorts, one final, another with a quousque, &c.

An Execution final, is, when the Defendants Lands are extended, or his Goods sold, and delivered to the Plaintiff, who accepting this in satisfaction, ends the Suit.

Co. 5. 87. An Execution with a quousque, and not final, is in the case of a Capias ad satisfaciendum, where the body is taken to the intent to satisfie the Plaintiff; but is no satisfaction, but a pledge for the debt. Neither is the parties imprisonment absolute, but until he doth satisfie or agree with the Plaintiff.

Nota que le Stat. Merchant, est bond ou obligac' de record, acknowledge devant le Mayor de London, York, Bristol, *ou* Chester, *ou de auter City, ou devant le Bayliff d'ascun borough ou ville, ou devant auters persons la a ceo purpose appoint; & est seal ovesque les seals del dettor, & del Roy; le forme de quel veies in* West. 106. Fitz. 130. c. P. Stat. 1. *Sur Statute Merchant.*

Si Stat. Merchant ne soit seal per le party, ne vault. 6 R. 2. Fitz. Exec' 131.

If a man be bound in a Statute Merchant (and do not pay the debt at the day) execution shall be done thereof in this manner: first (the Conusee may come to the Mayor or other Officer before whom the Statute was acknowledged, and pray him to certifie the same into the Chancery under his Seal, &c. And if he will not certifie it, then a writ of Certiorari must be sued forth of the Chancery, directed to the said Officer, &c. of the place where the Statute was acknowledged, to certifie the acknowledgment of the same Statute into the (petty bag Office in the) Chancery, and upon that Certificate (a writ of Execution) sc. first a Capias shall go out to the Sheriff against the body, (only of the Conusor (si laicus sit) to take his body, if he can be found, and command the Sheriff to keep him safely in prison, until he hath agreed for, or fully satisfied the debt: But the debtor after he is taken, hath liberty given him (within a quarter of a year) to sell his Lands and Goods to discharge his debts: and if he do not agree for his said debt within the next quarter, or if he cannot be found, then all his lands and goods upon an extendi facias shall be praised by a Jury, and shall be delivered (by the Sheriff) to the Creditor by a reasonable extent to hold until the debt be fully paid; and yet neverthelesse the body of the debtor if he be taken, shall remain in prison until the debt and damages be paid.

Certifie in le Chancery. *1. Execution serra del corps.* *Del terres & biens.* Statute de Acton Burn. 13 E. 1. & Stat. de Mercator 13 E. 1. Fit. 130, 131. & 244. e. P. Statutes 1.

And this writ may be returnable into the Court of Common Pleas, or into the Kings Bench. Fitz. 130. g.

But upon the return by the Sheriff (of that Shire to whom the Capias was directed) quod laicus est, & non est inventus in balliva sua, then shall go out an Extent (or Extendi facias) against all the Conusors lands and goods: quære vide le Regist. 147.

Non est inventus

And upon such an Extent come to the Sheriffs hands, the Sheriff shall or may presently cause the lands, and moveable goods of the debtor to be praised (and delivered to creditors, or else he may cause goods to be sold as far as the debt doth amount) and the debt without delay to be paid to the creditor. See Stat. de Acton Burnell 13 E. 1. And such valuation or Extent of the lands and praising of the goods, shall be by a Jury.

The Sheriff shall cause the same goods to be delivered to the creditor at a reasonable price, as much as doth amount to the debt.

And if the praisors of the lands, or goods do set an over high price, to the damage of the creditor, then shall the things so praised be delivered to the praisors at the same price, and they shall be forthwith answerable unto the creditor for his debt, &c. and yet if the goods be delivered to the praisors, they shall not pay the money until the days which are assessed and limitted in the Extent: but they shall presently become debtors for the duty and chargeable with the payment thereof, at such days as the rents are payable, or the revenues receivable, and not before. Plo. 205. b.

N. brc. 165. Fitz. Extent. 7. Plo 82. 127.

Also note, that the Sheriff must sell the goods to them which offer most for them, and if the Sheriff shall sell them at any under price, it seemeth the debtor hath no remedy. See the Statute de Acton Burnell.

13 E. 1. If the debtor have no moveables whereupon the debt may be levied, then shall his body be taken and kept in prison until he hath made an agreement, &c.

The Creditors shall be allowed for their damages, and all costs, labours, suits, delays, and expences. Stat. de Mercator. & Co. 4. 67.

And so soon as the debt is levied, the body of the debtor shall be delivered with his lands. Ibid.

If the Sheriff do not return the Capias; or do return that the writ came too late, or that he directed it to the Bayliff of some Franchise, he shall be punished, and shall yield damages to the party grieved, according to the Statute of Westminster 2. c. 39. Stat. de mercatoribus. Tamen vide tiel Retornes Libr. Intra, fol. 595. hic c. 58.

Note that though it be within a Franchise, yet the Sheriff is to execute it himself. See hic c. 58.

Si le debtor soit Noble home & Peer de Realm, uncore son Corps in ascun cases poet estre prise in execution, sur un Stat. hic c. 21.

See Fitz. 131. c. 266. b. Stat. le Mercator. Vide Fitz. Execut. 79. If the Sheriff return that the debtor is a Clerk, then there shall go out an extent against his Lands and Goods (only) to be delivered by a reasonable extent as aforesaid: but his body shall not be taken, by this Statute. And yet if the writ be to take his body (being a Clerk) the Sheriff may then take his body in execution; and the party is to procure a special writ in such case, to be directed to the Sheriff, commanding him not to grieve or molest him, and that if he be taken, that then he shall deliver him, except the Sheriff knoweth any cause why he should not enjoy the priviledge of a Clerk. Fitz. 131. a. Or the Sheriff needs not to meddle with the body, but may Return Quod Clericus, &c. *Clerk.*

If the debtor found sureties (which acknowledged themselves to be principal debtors after the day passed) they shall be ordered in all things as the principal debtor, &c. for the arrest of their bodies, and delivery of lands and goods, Stat. de Mercator. *Sureties*

But so long as the debt may be fully levied of the goods of the debtor, the sureties shall receive no loss. Stat. de Acton Burnell.

And if any of these debtors (being in prison) shall happen to escape, the Sheriff or Gaoler must answer the body or the debt; and therefore it behoveth the Sheriff and Gaoler that the prisoners be safely kept. Stat. de Mercator. *Escape.*

5 H. 4. c. 12. Note that when any Statute Merchant is certified into the Chancery, and thereupon a writ awarded to the Sheriff, and returned into the Common Pleas, and the Statute there once shewed, howsoever the Proces after the same shewing be discontinued, yet at what time soever the party sueth to have the Proces recontinued, and to have execution of the same Statute, the Justices of the Bench where the Statute was once shewed, may upon the same record make and award full execution of the Statute Merchant aforesaid, without having the sight thereof another time.

And yet see Dyer f. 180. Termino Pasch. Anno 2 El. where the conusee of a Statute Merchant having the same certified into the Chancery upon a Certiorari directed to the Mayor, thereupon sued a Capias against the conusor returnable into the Bench, at which day the Sheriff returned Non est inventus, and the conusee shewed there the Statute (as he ought) and had another Capias, before the return whereof the conusee died, and it was doubted whether his executors should have a Scire facias against the conusor, or that they should begin of new, sc. to sue a new special writ out of the Chancery to the Mayor, to make certificate (notwithstanding the first Certificate) and to have out of the Chancery a new Capias or no, or whether (at the suit of the Executors) the Justices of the Bench might have awarded an Alias Capias, or a writ Extent upon the first proceeding or not; But it was agreed by the Court that no Scire facias did lie in this case; but upon oath made by the Executors in the Chancery, that the debt is not satisfied, they shall have a new Certiorari to the Mayor, to make a new certificate of the Statute, and so to begin all again of new, vide Fitz. 231. b. c. Dyer 180.

Nota que sur Statut Merchant, home poet aver action de debt; ou poiet suer execution accordant al Statut. 3 E. 4. 27. 29 E. 3. 22. Br. Stat. 31. & 47.

Note also that if a man be in execution upon a Statute Merchant, he must be found in prison of the rents and revenues of his lands which are in execution; viz. the creditor out of the rents and revenues of his lands is to find him bread and water; the which costs notwithstanding the debtor must recompence the Creditor again with his debt, before the debtor be let out of prison. Stat. de Acton Burnel. & Fitz. 133. c.

CAP. 25.

Statute Staple.

Statute Staple. *LE Statute Staple est de deux sorts, ou in deux manners:*

1. *L'un per force del Statute* 26 E. 3. c. 9. *& ceo* proprie sic dicitur.

2. *L'auter per force del Statute.* 23 H. 8. c. 6.

Le primer est obligation de record, acknowledge devant le Mayor del Staple, in le presence de un del Constables de mesme Staple, & est seal ove le seal del Staple, & seal del party: mes tiel Statute Staple ne serra prise, sinon tantum inter merchants de mesme Staple, & pur Merchandises de mesme Staple. Stat. 23 H. 8. c. 6. 27 E. 3. c. 9.

Lauter est obligation auxy de record, & de mesme le nature & force que le primer est, quant al execution de ceo: mes est acknowledge devant lun del Chief Justices, & in lour absence (hors del terme) devant le Mayor (del Staple al Westminster) *& le Recorder de* London, *& est seal (ovesque troies seals,* Vide pl. 62. b.

seals, &c.) ovesque le seals del conusor, del Roy, & del un des dits Justices, ou del Mayor & Recorder. 23 H. 8. c. 6. P. Stat. 5. 7. & 9.

Les formes de ceux Statutes Staple, veies 23 H. 8. c. 6. P. Stat. 6. & in Westm. 108, 109.

7 El. c. 4. *Nota que touts Statutes (Merchant & Staple) serra port al Clerk de Recog. deins 4. mois, & inroll deins 6. mois, autermant tiel Statute serra void vers purchasors, &c.* P. Stat. 15, 16.

Cestuy que est en execution sur Statute Staple, ne serra deliver sans Scire facias *vers party, & surety sur ceo trove al Roy, & al party.* 11 H. 6. c. 10.

27 E. 3. c. 9. 15 R. 2. c. 9. Fitz. 131. d. **A Statute Staple must be certified (into the Chancery) in the like manner as a Statute Merchant, and upon that Certificate a Writ of Execution shall presently go forth, both against the body (**si laicus sit**) and against the lands and goods of the conusor, returnable in the Chancery in the pety bag Office there, (and not into the Court of Common Pleas, or Kings Bench, as the Writ of Execution upon a Statute Merchant shall.) And upon the writ of Execution, the Sheriff shall take the body of the Conusor, and shall also (**per sacramentum proborum & legalium hominum, & juxta verum valorem. Fitz. 131. d.**) presently extend, and prise, and shall seize into the Kings hands his lands, goods, and chattels, and that extent and prisement or valuation of the lands and goods shall return and certifie into the Chancery as aforesaid, and thereupon the Conusee shall have another Writ called a** Liberate **to the Sheriff, out of the Chancery to deliver to the Conusee those lands and goods to the value of his debt, &c. And upon that** Liberate **delivered to the Sheriff, such lands and goods as are taken in Execution, shall without any other Inquisition, and according to the former extent or valuation, be delivered to the Conusee by the Sheriff, and not before. And this Execution shall be made in manner as before is declared upon a Statute Merchant.** 27 E. 3. c. 9. Vide Plow. 62. b. & Fitz. 131. e. 132. **the form of the** Liberate. *Certificate in le Chancery.* *Liberate.*

Et sic nota, *que sur Statute Merchant l'obligor ou conusor serra imprison pur dimid' ann'. Et sil ne vend ses terres deins mesme temps pur payer ses debts, donque ses terra deliver al obligee tanque son debt, &c. soit satisfie. Mes sur Statute Staple le dettor ou conusor apres que il est prise, n'avera libertie de vender ses terres, & biens, deins le demy an, come il avera sur Statute Merchant; Mes per force de cest Statut Staple, si le money ne soit pay al jour, maintenant apres certificate del ceo en le Chancery, le creditor poit aver execution del corps, terres, & biens del detter, &c. le conusor serra imprison, tanque il ad fait gree al creditor del debt, & damages, & touts ses terres & biens serra extend instanter; Mes ne serra deliver al conusee tanque le liberate vegne al vic.* *Regula.* 27 E. 3. c. 9.

Auxy nota que sur Statute Staple le extent serra primes fait, & retorne, & puis bref de Libertate *serra agard; mes delivery ne serra fait al commencement, tanque le chose appiert certainment per le retorne del viconnt.* Plo. 62. b.

32 H. 8. 46. *Touts obligations & specialties faits al Roy (ou a son use, pur ascun cause) serra de mesme force que Statute Staple est.* 33 H. 8. c. 39. & 22. *Dettor le Roy.*

Touts obligations prise de Ecclesiastical persons pur lour first-fruits, serra de mesme le nature & force que Statute Staple est. 26 H. 8. c. 3.

Les terres de (plusors) accountants al Roy, serra liable & mise in execution, sicome ils ussent estre lie in Statute Staple. 13 El. c. 4. P. Account. 29. & 39 Eliz. c. 7.

Le heir que claime per donc son auncester, serra lie a payer le det le Roy, per Statute. 33 H. 8. c. 39. & 34 H. 8. c. 2. Plo. 440. Co. 7. 19.

Issint le heir in tail (per mesme le Statutes) serra liable de payer det le Roy due per son Auncester. Ibidem. Vide Plow. 240. b. 249. b. 554. b. & Fitz. 217. c.

Mes si tenant in taile deveigne in det al Roy per receit des deniers del Roy, ou auterment, sinon que soit per judgment, recognisance, obligation, ou auter specialty, & morust, la le terre in le seisin del issue in tail, per force del dict act de 33 H. 8. *ne serra extend pur tiel det le Roy: car le Statute de* 33 H. 8. *extend solement al dits 4 cases; & touts auters dets le Roy remain al Common Ley.* Co. 7. 21.

Si tenant in taile deveigne in det al Roy, per un des dits 4. voies (sc. *per Judgment, Recognisance, Obligation, ou auter specialty) & morust, & devant ascun proces ou extent, le issue in taile* bona fide *alien (ou lessa) le ters intailed, ore cest terre ne serra extend per force del dit act de* 33 H. 8. Co. 7. 21.

Issint, lou det fuit originalment due al subject, & apres deveigne ou accrue al Roy per reason de attainder, utlawry, forfeiture, done del party, ou per ascun auter voy, ou meanes, tiel det nest deins le dit Statute de 33 H. 8. *de charger terres intailed, in le possession del heir in taile.* Co. 7. 22.

Mes terres in Feesimple fueront extendable al Common Ley (pur det le Roy) en quecunque mains que eux deviendront; & pur ceo quant al eux le dit Statute de 33 H. 8. *ne fuit forsque* declarativum antiquis juris. Co. 7. 21. Ibidem.

Deux jointenants in fee, l'un de eux esteant debtor le Roy morust, laut' tiendr' discharge. Fitz. Execut. 113.

Le heir serra chargeable de paier det le Roy, coment que il ne soit nosme (ou que cest parol heir ne soit comprise) deins le Recognisance, Obligation, ou specialty. 33 H. 8. c. 39.

Roy serra preferre in son suit & execution, devant common persons, sc. *si son suit soit commence devant l'auter ad judgement, vide les Statutes.* 9 H. 3. c. 18. & 33 H. 8. 39. & hic c. 10.

Auxi Dyer 67. *le vic. sur brief de extendi fac (d'aver execution sur Statute Staple) extend les ters del def. & appreise ses bienz & eux seise in mains le Roy, come le dit brief command, & avant que fuer. deliver per le vic. al conuzee, auter brief de Prærog. vient al vic. hors del Eschequer pur la Roin, de levier det le Roin de* 100 l. &c. *Et le vic. retorne le primier extent, & que ultra ceo biens & ters n'ad autres, & fuit tenus que le Roin avera execution de dits biens & ters, per sa Prærog. Eo que le property de eux ne fuit in le conusee, tanque sont deliver a luy per le brief de liberate, & le vic. fuit amerce pur le special retorne, &c. Et accordant a ceo fuit tenus per Curiam (in Communi Banco)* Anno 31 Eliz.

que sur extendi facias d'aver execution, & le vic. fist extent accordant del ters & biens le party, & eux seise in mains le Roy accordant al brief que ore le possession del terre ne le property del biens ne serra in cestuy pur que l'execution est fait devant que ils sont deliver a luy per le vic. sur le Liberate; car les parols del brief sont de seiser in mains le Roy,&c issint que ils ne sont in le Roy tanque delivery, &c. vide autres semble cases. Dyer 197.296. & 307.

Co. 8.171. *Debtor le Roy possesse dun lease vend ceo* bona fide, *cest lier le Roy, car forsque chattell.*

Co. 11.93. *Nota que le Roy levier le summe de que ascun est chargeable a luy, non solement vers le party mesme, s. de son corps, & ses terres & biens in ses mains demesne, mes in les mains de ses heirs, exec. ou administrat. & s'il nad executor ou admin. donques in les mains des possessors des biens del mort.*

CAP. 26.

Queux terres, & biens serra extend ou prise (per le Vicount) in execution (sur Statute ou in brief de debt, &c. apres judgment) in case de common person.

N*Ota que sur Statute Merchant, ou Staple, touts le Fee-simple terres, queux le conusor avoit al temps ou jour del dits Statutes acknowledge, ou al ascun temps en apres, serra liable al dits Statutes, in quecunque mains que ils viender. apres, per alienation, feoffement, ou auterment.* Stat. de Mercatoribus 13 E. 1. 27 E. 3. c. 9. & 23 H. 8. c. Co. 3. 12.

Et uncore si un auter ad ceux ters in execution per elegit, ou que un auter est eins per discent, &c. il ne serra mise hors de possession sans Scire facias; *Et per ceo in tiels cases le vic. doit returne tiel special matter, sur le brief de extendi facias.* f. Reto. 112. s. the Sheriff in the first case may return that he hath extended the land of the defendant, but that he cannot deliver the same to the plaintiff, for that another had the same in extent before, hic c. 28. & 27.

Si le debtor mourust, le corps de son heir ne serra prise, mes son Fee-simple terres que discend a luy del conusor serra prise (in forme avandit) si soit de pleine age ou quant il viendra al plein age, quousque le det soit levie, Statute de Mercatoribus.

Et issint fuit le Common Ley devant, s. que in det vers le heir, le plt. avera tout le terre, que discend al heir, in execution, & uncore navera. donques exec. dascun part del terre vers le pere mesme.

Nota que le heir ne serra charge pur debt due per son auncestors, neque per le Common Ley, nec per Statute, sil ne soit Nosme. Uncore le ter que le heir ad serra extend per elegit, sur Scire facias *port vers luy come terre tenant, de terre liable al execution.* Dyer 271.

L'executors serront charge coment que ils ne sont nosme Auterment del heir. Co. L. 209.

Nul

Nul execution serra sue vers le heir deins age, sur Statute Merchant, ou Staple, Recogn. Elegit, ou Obligation. Co. L. 290.

Home seisie de ters in Gavelkinde ad issue 3. Fitz. *& lie luy & ses heirs in obligation, & morust Action de debt serra maintain vers touts les fits.* Co. L. 137. b.

Auxi nota que ad este tenus que le heir ne serra charge in det lou le executors ont assets. Vide Fitz. Exec. 25. Br. Det. 237. 7 Ed. 4. 13. & Plo. 193. a. b.

Mes (a ceo jour) le Ley semble autterment, sc. que est al election del creditor de suer le heire, ou le executor, quant ambideux ont assets. Vide 4 E. 4. 25. 22 H. 6. 4. 10 H. 7. 8. Doct. & Stu. 153. Dyer 204. & Plow. 439. 440.

Auxy semble que si le heire ne confess l'action, & monstre le certainty del assets que il ad per discent, mes plede riens per discent, ou est condemn per default, &c. que la le plaintiff avera execution de son auter terre, ou de ses biens, ou de son corps, per Capias ad satisfac. Plo. 440.

Nota que Fee-simple terres del heir' queux il ad per discent, jour del brief purchase, ou apres, serra liable: autterment sil ad alien devant le brief purchase, sinon que soit per covin, Co. 5. 60. & 10 H. 7. 8. Co. L. 102.

Possession in Ley que discend sur le heire, luy charger.

Issint lou il entre pur condition, &c. Br. Assets 8.

Pur ters in Gavelkinde touts les fits serra liable pur det lour pere.

Reversion sur estate pur vie discend al heire, ceo luy charger, &c. Br. Assets 12. 19.

Reversion serra mise in execucion, & le Judgment serra cum acciderit, & in le mesme temps serra del rent, Dyer 373. Fitz. Assets 237.

Reversions, & remainders serra extend in quecunque mains que il vienderont per Curiam. Mich. 36 Eliz.

Nota in det home avera execution de nul terres mes de cel que le def. ad le jour del judgment done ou rendus. 2 H. 4. Fitz. Execut. 24. Vide *le Statute de Frauds & Perjuries,* Anno 29 Ca. 2. *quant a cest point.*

Si home sua Statut Merchant de parcell de les terres, in mesme de touts les terres, il naver auter execution apres. Fitz. Execut. 134.

Si jeo nay forsque un acre per discent, jeo serra charge de 1000 li. *per obligation fait per mon pere,* per Belk. 40 Ed. 3. 15. Fitz. Execution 32. Vide & quære. *Car semble que le heir poit counstre ceo que a luy est discend, & demand Judgment si de plus que de value del ceo il doit estre charge.*

Terres intail ne sont liable forsque durant le vie le conusor come si tenant in tail Plo. 357. b.
sont lie in Stat. ou Recognisance, le terre taile serra lie durant son vie, mes ne lier lissue in taile. Br. Recog. 7. *Uncore si lissue in taile infeoffe estranger ore execution serra vers le feoffee,* 19 E. 3. Fitz. Resceipt. 112.

Mes si tenant in taile conust Statute, ou Recognisance, & apres alien, le terre in mains le feoffee ou alienee serra subject al cest Statute ou Recognizance. Co. 1. 62. & 2. 52. 8 H. 7. 8. *Copy-*

Copyhold terres, ne sont liable, ne serra extend sur Statute ou recognisance &c.

Lease pur terme pur vie, serra extend, per annual. value, de satisfie le debt. Mes le vic. ne poict vender ceo pur debt.

Nota que sur judgment in brief de debt le pl aintiff ne avera execution, mes de tiels ters queux le def. avoit jour de judgment rendre & de chattels, il avera execution solement de ceux que def. avoit jour de execution sue, Termes del Ley tit. execution & viel Na. bre. 165. 2 H. 4. 14. Br. 23. Co. L. 102. a. Finch. 471.

2 H. 4. Execute 14. Kiel. 87. *Lease pur terme pur ans, & touts auter biens & chattels del conusor ou debtor sont liable, & serra extend,* sc. *(in debt ou sur Stat.) tiels queux le Debtor, ou conusor ad in son possession demesne, & a son use demesne, al temps ou jour del execution sue, ou agarde. Mes sale de chattells,* bona fide, *apres judgment, & devant execution agard' est bon (sed nemy apres execution agard) come appierten.* 2 H. 4. f. 14. per cur. 11 H. 4. f. 7. & 9 H. 6. 58. & Co. 8. 171. & N. bre. 165.

Uncore per Babbington 7 H. 6. Br. Execution 116. *Si home soit condemn in debt, ou oblige in un Stat. les biens queux il ad jour del judgment, ou conusance del recognisance serra lie al execution, en quecunque mains que ils viendera,* quod non fuit negatum: & Co. 7. 39. a. *Chescun execution, in le judgment del Ley, ad relation, & retrospect al judgment.* See hic c. 29.

Mes un fraudulent conveyance, ou done de terre, ou biens, ne avoider ascun execution, vide *les Statutes* 50 E. 3. c. 6. 1 R. 2. c. 9. 2 R. 2. Stat. 2. c. 3. 3 H. 7. c. 4. 13 Eliz. c. 5. & 7. & *les livers.* 43 E. 3. f. 3. Dyer 295. & Co. 3. 81, 83, 83.

Terres in auncient demesne sont liable al Statute & poient estre mise in execution sur ceo. Vide F. Execution 118. & 7 H. 7. 10. Br. Aune. dec. 37. in. Fitz. Retorne 109. contra, & Dyer 373. vide Co. 4. 67. & 5. 105.

Terres, ou biens, tenus jointment per le conusor ovesque estranger, & le conusor est condemn in damages & morust devant execution, ceux terres ou biens veignans a le estranger per survivor, ne sont extendable, Br. Execut. 116. & 148. & Fitz. Execution 113. 13 H. 7. 22. a.

Terres la feme sont extendable durant le coverture, pur debt le baron, 15 H 7. fol. 14.

Rent poit estre deliver in execution. Fitz. Avowry 237. Exec. 63.

Rent extinct per release del party, poit estre extend, Co. 7. 38, 39.

Come si home ad judgment a recover det, ou damages, per ceo le rent que ad dascun estate de franktenement est liable a ceo, & pur ceo coment que apres judgment ceo soit release, &c. uncore ceo poit estre extend.

Mes homes navera unques un chose extend sur un execution sinon que il poit graunt & assigne mesme le chose, per Shelly 28 H. 8. f. 7.

Et pur ceo un annuity ne poit estre deliver in execution, Doct. & St. f. 53.

Issint les profits del office, ou auter chose que ne poit estre grant ou assigne oustre, ne serra extend, Dyer f. 7.

Biens

Biens demise ou pawned, ne poient estre prise en execution, pur son debt que demise ou pawn eux durant le temps ou terme, que ils sont issint demise ou pawn, vide 22 Ed. 4. fol. 10. 34 H. 8. Br. Pledg. 28.

Come si home (bona fide) *lessa son barbits (ou oxen pur ans) &c. ou sil bail ses biens in pledge & apres serra condemn in personal actions, la tiel barbits ou biens ne serra prise & mise in execution, tanque le lease soit determine, ou le money pay pur le pledge.* Br. Distr. 75. 4 Ed. 6.

Issint semble de biens que sont distrain pur just cause (come pur rent, amerciament, damage fesant, & tiels) & sont impound, ils sont ore in custodia legis, & tamdiu *que ils sont issint, ils ne poit estre prise in execution.* See Br. Pledges 18. Finch. 11.

Det ou damages recover vers un communality, nul execution serra fait mes tantum del biens queux ils ont in common, Fitz. Execution 128.

Si le conusor infeoffe le Roy, ceo ter. est discharge del execution. Fitz. 266.

Issint touts auters terres del Roy sont exempts des distresses, & des executions, Plo. 242. b.

Si plusors homes soient severalment seisie de terre, & ils touts join in un recognisance (Statute Merchant, ou Statute Staple) in cest case le conusee ne poit extend la terre del ascun conusors solement, mes touts les conusors doient owelment estre charge, & lun deux solement ne portera tout le burden, pur ceo que sont touts in owell degree: Et in executions queux concerne le realty & charge le terre, le vicount ne poit faire execution del terre lun solement. Co. 3. 13. a. 14.

Lou le conusor ad alien part de son terre, uncore le conusor mesme, al volunt de conusee, poit estre solement charge, pur ceo que il est mesme le person que fuit le dettor, & que fuit lie, & pur ceo il & ses terres poient estre solement charge. Co. 3. 14. Br. Suit 10. 12.

Issint le heir del conusor (ou de cestuy vers que judgment est done in det) poit estre solement charge; uncore in ascun cases le heir del conusor avera contribution vers le feoffees son pere, &c. See Br. suit. 12. *mes* Co. 3. 12. *semble contr' sc. que le heir navera contribution vers ascun purchasor, coment que* in rei veritate *le purchasor vient al terre sans ascun valuable consideration, &c. car coment in le case dun recognisance, Statute ou judgment, le heir est charge come terre tenant, & nemy come heir (& le reason del ceo est pur ceo que per le recognisance, ou Statute le heir nest lie, mes le conusor* concedit, quod dicta pecuniæ summ. de terris, &c. levetur) *uncore il navera contribution vers un purchasor.* Co. 3. 12. Br. Suit 12.

Vide *le liver* 17 E. 2. Br. Suit 13. & Fitz. Execution 139. *que cy longe que le heir ad assets execution serra vers le heir tantum, mes si le heir n'ad assets, execution serra sur touts les terre tenants, & chescun serra contributory al auter: mes lou execution est sue vers le heir, que ad assets il n'avera contribution vers le terre tenants ne feoffees.*

Mes quant le terre discend al divers heirs (ou files) lun heir solement ne serra charge, mes touts les heirs ensemble serra charge, auterment un heir avera contribution vers l'auter heir, car ils sont in æquali jure. Co. 3. 12, 13.

Si

Br. Suit. 10. 12. *Et quant al purchasor de tiels terres, coment lour dits terres apres le Judgments, Recognizance, ou Statute, soit subject al execution, uncore tiels purchasors ont greinder priviledges done al eux (per le Ley) que le conusor mesme, ou son heir, ont: Issint que si le terres de un purchasor soit solement extend pur lour det, tiel purchasor avera contribution vers touts auters de les purchasors, & vers le conusor, vel son heir; mes nota que per cest parol, contribution, nest destre intend que les auters donera ou allowera a luy ascun chose per voy de contribution, mes doit estre intend, que le purchasor (ou party) que ad son terres solement extend pur tout poit per* Audita querela, *ou* Scire facias *(come le case require) defeater le execution, & per ceo serra restore a touts les mean profits, & chaser le conusee de suer execution de tout le terre, issint que in cest manner chescun serra contributory, issint, le terre de chescun terre-tenant serra ovelment extend.* Co. 3. 14.

Mes si le conusor infeoffe le conusee del parcel del terre, & un estranger de auter parcel, & reserve parcel in ses mains, ore le conusee navera execution vers lestranger (ou ascun auter feoffee; car tout serra extinct vers les feoffees) mes uncore vers le conusor, le conusee avera execution del parcel que remain in son mains.

Fitz. 246. b. *Si le conusor d'un Statute Merchant, ou Staple, &c. soit prise, & morust in exec. uncore le conusee avera novel execution de ses terres & biens.* Do. 5.86, 87. vide Fitz. 246. b. St. 21 Ja. c. 24.

Co. 5. 86. *Si le conusor sur Statute, &c. soit prise in execution & escape, uncore ses biens & terres sur mesme Statute poit estre extend; car lescape, & laction que le plaintiff ad vers le viscount pur lescape, n'est satisfaction del det.*

Vide plus hic postea Execution *sur* Capias ad satisfaciendum.

11 H. 6. *Si le conusor, &c. esteant in execution procura* Corpus cum causa, *de remover son corps, & sua* Scire facias *vers le conusee, &c. a defeat execution sur un Statut, il primerment trova sureties al Roy, & al party plaintiff de yeald son corps, ou de satisfier luy son det ou duty, in case que de matters comprise in son* Scire facias *ne soit trove & adjudge pur le conusor.* Stat. 11 Hen. 6. cap. 10.

3 Jac. *Auxy per le Statute* 3 Jac. c. 8. *nul execution serra stay, ou delay, per brief de Error ou* Supersedeas, *pur reversing d'ascun judgment in ascun action de det, sinon que le party (que sua tiel brief de error) ovesque 2. suffic. sureties soit primerment lie al party pur que tiel judgment est done, de prosecute le dit brief de error cum effectu, ac de payer touts le dets, damages, & costs, &c. si le judgment soit affirme, ac etiam costs & damages pur tiel delay.*

2 H. 5. c. 2. Fitz. 251. c. *Et pur ceo si home soit condemn in ascun court, & son corps mise in execution, & puis il procure un brief de* Corpus cum causa *ou* Certiorari, *destre direct al vicount de remove son corps, &c. icy le vicount sur le dit brief, doit return le verity,* sc. *que son prisoner est condempne per judgment done envers luy &c. sur que le prisoner serra maintenant remand al prison, la a demurrer quousque il ad satisfie le plaintiff.*

Fitz. Execution 22. & 88. acc. *Si Statute soit acknowledge al deux, & l'un de eux purchase apres terres del* Purchase parcel *conusor, donque semble que le dit Statute ad perde son force vers ambideux.* Vide le Register 147.

Si execution soit sue del corps, & del terre, & puis le conusor infeoffe le conusee del terre, ou surrender parcel discend a luy, in touts ceux cases le corps serra discharge, car per discharge del part del chose in execution tout est discharge. Plo. 72. b.

*Si home soit lie in 2. Statutes, lun apres lauter, & le darreine Stat. est primerment extend & deliver in execution, & puis le primer Stat. est mise in * execution pur greinder temps, & pur greinder summe, uncore quant le primer Statute est satisfie, le second conusee avera le terre arere per force del primer extent.* Co. 4. 66. vide Fitz. Execution 250. * Nota le primer conusee poit aver Scire fac. & execution sur ceo.

Quant le extent (sur Statute) est satisfie & incurre per effluxion de temps, le conusor poit enter arere. Co. 4. 67.

Mes quant lextent est satisfie per casual profit, le conusor covict de aver Scire facias &c. Ibid.

Defesans al Statute, fait apres execution, est bon, & defeatur cybien le Statute, come le execution sur ceo. Co. 6. 13.

Le statute de Mercatoribus, *lie touts le terres queux le conusor al execut' & voet que serra deliver al conusee sur reasonable extent, mes ne parle que serra deliver al extender, si ils eux extend trope haut; & uncore serra deliver al extender, per le equity del Statute de* Acton Burnell *fait devant, que parle que biens preises trope haut serra deliver al preisors, &c.* Plow. 82. b. 127. a. & 205. b. Co. L. 290.

Biens ouster preise. *Mes nota que le Statutes de* Acton Burnel &c. *est que si les preisors del biens le conusor* (sc. *les Jurors) preise eux trope haut (in favour del dettor, & al damage del creditor) les choses issint preise serra deliver al preisors per mesme price & ils render le creditor son det, ceux Statutes sont penal & ne extender al ascun auter briefs de execution forsque sur le Statute Merchant, ou Staple, & sur Recog.* Quære Co. L. 290. *Recognizance. Et pur ceo sur breif de* Elegit *ou auter brief de execution sur judgment, si les extenders (ou preisors prise les terres, ou biens, trope haut, le plaintiff* (sc. *le creditor) n'ad remedie.* Benl. 4 P. & M. Quære *si Reextent ne gist.* Et vide Stat. 32 H. 8. cap. 5. & Co. L. 289. b. 290. *le dit Stat. bien Expound.*

Nota quant les terres ou biens sont deliver al extendors, ils maintenant responder al creditor, de son det, per les parols del Stat, & uncore ils ne payer le argent tanque a les jours limit in l'extent. Plo. 205. b.

Si le dettor complaine que ses biens ou terres fuer' vend, ou deliver al conusee, al trope petit value, uncore il n'ad remedy per le Common Ley, car in tiel cases le debtor poet pay le money, & recovera ses terres, ou biens, 15 H. 7. 15. *Et auxy semble que navera remedy in Chancery, Eo que l'extent fait per Serement del Jury, especialment si ne fuit fait per Covin: Mes serra intend que fuit Extend reasonablement, intant que les Extendors sont jurus, Car auterment chescun verdit poet estre Examine in Court del Chancery.* Cromp. Author. des Courts 55.

Nota si le extendors ont extend les terres ou biens a trope haut value, uncore si le vicount sur lextent deliver eux al creditor, & le creditor prist eux solonque le extent, ou sil ne vient in court mesme le terme que le vic' fait son retorne, & pria que sont deliver al extenders, il n'avera remedy apres. Register 146. b.

Et

Et pur ceo le party poiet bien refuse terre extend trope haut sur Statute, auterment serra conclude a preyer que lextenders ils avera. Fitz. extent. 11.

Auxy le party poiet bien refuse quia le vicount ne voil luy deliver forsque parcel del terre le conusor; car sil accept ceo, il serra conclude a demand tout apres. Fitz. Execution 48. & 86.

Coment le vic. doiet pur luy demeaner in lexecution d'un Extent sur Statute ou Elegit. Vide plus hic postea, *retorne de Elegit, & retorne de Extent.*

CAP. 27.

Execution sur Recognizance.

R*Ecognizance, est obligation de record, acknowledge in ascun Court de Record, ou devant ascun Judge, ou auter officer, avant authority de prender quid ceo, come devant les Judges del Banco Regis, vel del Common Pleas, les Barons del Exchequer, les Masters del Chancery (soient ils in ordinary, ou extraordinary) & les Justices de Peace, &c.* Et *eux que sont meere Recognizance, ne sont seale, mes sont inrol; Et ascun foits sont seale, ove le seale del party: Et poient estre ove condition annex, ou poet estre single, & donque de aver Indentures de defeasance faits apres.* Br. Recogn. 11. 14. & 19. *Recognizance.*

Chescun des Chief Justices, vel en lour absence hors del terme, le Majors del Staple de Westm. *ove le Record. de* London. *poiet prender Recogn. & serra execute en touts respects come Statute Staple.* 23 H. 8. c. 6.

Auxy le Roy poit per son commission doner authority al ascun home de receiver conusance de auter home, & de retorne ceo en le Chancery; Et per vertue de tiel commission, si home conust devant commissioner, ascun det al auter, destre pay a luy a certain jour, &c. & ceo certifie in le Chancery, ove le commission, &c. ore sur ceo certificate fait del cest conusance, sil ne paya le det al jour, il avera Elegit sur cest Recognizance issint prise, cybien come sil fuit prise in le Chancery. Vide Fitz. 267. a. Regist. 300.

Roy mesme ne poet prender Recogn. mes doiet aver Judges ou Commissioners de south luy de ceo prender. Br. Recogn. 14. & 19.

Le Court de Parliament seant, poet prender Recogn. Br. Recogn. 8.

Eadem lex de Seignior Chancellor de Angliter, ou Seignior Keeper del grand seale. 1 H. 7. fol. 20. *que ils poient prender Recogn.* Tamen Dyer 220 pl. 14. semble contra.

Les Justices del banco poient prender & Recorder Recogn. cybien extra Terminum, come infra Terminum, & cybien in ascun County de Angliter, come al Westm. *ou in Curia.* Br. Recogn. 20. vide.

Chescun Judge de Record, & chescun Justice ou Commissioner de Peace, que ad authority de seer in Justice pur le bien publique, poiet prender Recogn. Mes conservat. del Peace que est per le Custom de Realm (come Constable, &c.) ils ne poient prender Recogn. Br. Recogn. 8. 14.

Auxy Justices de Peace que sont per Statute, ou per Charter, poient prender Recogn. pro Pace.

Chescun vicount del County est principal Conservator del Peace, per le Common Ley, & poiet prender Recogn. Vide hic c. 4.

Le Chancellor de Court de Augmentations poiet prender Recogn. del Receivers, Farmers, Bayliffs, & auters Accomptants la, & tiel Recogn. de quecunque summe soit prise, serra bon. 27 H. 8. c. 27.

Les Knights del Parliament, & les Citizens & Burgesses, elect pur le Parliament, poient appointer Collectors pur les Dismes & Quinzimes, & sur lour Nomination & Election de tiel Collectors, poient prender Recogn. del eux (al use le Roy) d'estre indorse ove Condition de p[illegible]r tiel summes que ils Collecter, &c. Et ils certifier tiel Recogn. in le Eschequer; vide les Statutes faits pur le grant des tenths & fifteens.

Issint les Commissioners pur le subsidy poient appoint Collectors del subsidy, & poient prender Recogn. de eux, &c. Ibid.

Coroners sur lour Enquiry super visum corporis, &c. poient prender Recogn. de tiels queux poient doner evidence, &c. pur lour appearance al prochein general gaol delivery, pur deliver lour knowledge la concernant le mort, &c. 1 & 2 Ph. & M. c. 13.

Quant home conust debt en Court de Record (ou tiel) soit al Roy, ou al common person, est le plus hault lieu que poiet estre & come un judgment (Scire fac. *cybien come action de debt gist) & per ceo conus per un enfant ne serra avoide forsque durant son nonage, per audita querela.* Dyer 232.

Nota que Recogn. n'est al Common Ley.

Sur Recognizance, la ne issera Capias, *in l'orig.* Nec Capias ad satisf. *Mes al primes la issera un* Scire fac. *returnable in le Chancery; Et sur le retorne del ceo, ils use d'award un* Fieri fac. *ou un* Elegit, *al election del consee.* 48 E. 3. f. 14. Br. Execution 129. & Dyer 192. 306.

Lou un Capias *fuit agard sur un Recogn.* Fairfax *move le Court que il poiet aver Supersedeas, & fuit grant pur ceo que* Capias *ne gist sur Recogn.* 27 H. 7. Kell. 100.

Mes si le plt. voile porter un original brief de debt al Common Ley, vers le conusor sur son Recogn. la si le def. soit condemn, un Capias ad satisfac. *gist, & le corps del conusor serra prise in execution; Car la le plt. ad waive le plus speedy remedy,* sc. *le* Scire fac. *que est fondue sur le Record, & ad eslieu l'auter remedy, &c. Mes il n'avera execution la des ters que le conusor avoit jour de Recogn. fait, sicome il puissoit aver in le* Scire fac. *mes des ters tantum que le conusor avoit die judicii redditi sur l'original brief.* Dyer 306.

Sur Recogn. le conusee ne poit aver action de det envers le heir, car le recogn. est, quod tunc vult & concedit, quod dicta pecuniæ summa de bonis & catallis, terris & tenementis, &c. levetur; *issint que le charge est impose sur les biens & terres, issint que det ne gist sur ceo vers le heir, mes* Scire fac. *gist vers le heir.* Co. 3. 15.

Uncore sur recogn. acknowledg al use le Roy (coment que les parols del recogn. sont de bonis & catallis, terris & tenementis, &c. levetur*) le Roy avera liable a son* 7 H. 4. f. 34.

execution

execution, cybien le corps, come les terres & biens de son dettor. See Co. 3.12. b. & 11. 93. a.

Execution per force del recogn. (in case de common person) serra de touts les biens & chattels le conusor, (except ses avers del carve, & implements de husbandry) & del moity de ses terres, & hoc per le Statute de Westm. 2. cap. 18. Westm. 103.

Recogn. de tenant in taile ne liera le terre taile, mes durant vie le conusor, & nemy envers lissue in taile. 38. Ass. Br. Recogn. 7.

Sur Recogn. le creditor preia Elegit del ter. que le conusor avoit jour del conusance, ou unques puis, & non negatur mes que il avera; Mes fuit dit la, que si le vic. Retorne que le conusor avoit rien jour del Recogn. conus. mes purchase puis, la il avera come est preia supra, & non ante per luy: Et cum ipso concordat les ancient Tenures tit. Tenant per Elegit. Tamen a ceo jour il est use d'aver de lun & l'auter al primes. 24 E. 3. Br. Recogn. 4.

Scire fac' *vers un que conust un Recogn. le vic. retorne luy mort, per que issist garnishment vers les terre tenants, que fuerant retorne garneis, & ne veigne pas, per que le plt. avera Elegit.* 38 E. 3. Br. Recogn. 2.

A quel temps Recogn. poiet estre sue. Vide Br. Recogn. 3. & 17. & Fitz. *266.* c. 267. b. c. d.

Nota que sur Recogn. le vicount poiet faire execution de tout le moiety del ters, queux le conusor avoit al jour del Recogn. fait ou apres: Et le Extent ou valuation del dit moiety des ters, & preising des biens le conusor serra per inquisition. Et sils overvalue eux ils serra deliver al preisors, come in case de Statute Merchant. Beal. 4 Ph. & Mariæ.

Auxi le Extent del dit moyety des ters, serra per meetes & bounds come semble.

Auxi sur recogn. le moyety del ters le conusor, queux serra deliver per le vic. al conusee, serra al conusee, tanque le det soit levy per reasonable price & Extent; de que le conusee poiet aver assise, & redisseisin. Finch. 101.

Vide per Statute 32 H. 8. c. 5. *Reextent done sur terre in execution sur Statute Merchant, Staple, ou Recogn. loyalment evict, devant tout le det & damages satisfie.* Vide Co. L. 289. b. 290. *Cest Statute bien expound.*

Auxi nota que cest parol recognisance, extend sovent foits in nostre livers, al Statutes Merchants, & Statutes Staple.

CAP. 28.

Execution per Elegit.

An Elegit is a Writ judicial, and lieth either for him that hath recovered debt or damages in the Kings Court, or upon a Recognisance *Elegit.*

cognisance in any Court, and must be sued within the year, *Termes del Ley*. Finch. 101. Co. L. 289. b. & 290. b.

By force of an Elegit, the Sheriff may take in execution, and deliver unto the party (sc. unto the creditor) the one half of all the lands, tenements and rents of the Conusor or debtor, at a reasonable extent, and all his goods and chattels (præter boves & affros de caruca sua) saving only his Oxen, and beasts of his plough, until the debt be levied, upon a reasonable price or extent: And this is by force of the Statute of West. 2. c. 18. which is the first Statute which did subject land to be taken in execution upon a Judgment, or upon a Recognizance, which is in the nature of a Judgment. 13 E. c. 38. Co. 3. 12. a.

Auxi sur debt ou damages recover in Court le Roy, le moiety de ters le conusor que serra deliver per le vic. sur le Elegit, serra al conuzee tanque le debt soit levy, &c. & de ceux le conuzee poiet aver Assize & Redisseisin. Finch. 101. & N. bre. 166.

Mes in case de Elegit, le conuzee n'avera Damages, costs, ne auter chose, mes solement le terre, tanque le debt soit satisfie. Co. 4. 67.

This Statute of West. 2. c. 18. (which giveth this Elegit,) provided, quod vicecomes liberet ei omnia bona & catalla, &c. Et medietatem terræ suæ, quousque debitum fuerit levat. per rationabile pretium, & extentum: which last words, pretium, is to be referred to chattels, and extentum to be referred unto lands; Et rationabile pretium & extentum, ought to be found by inquisition and verdict, sc. the appraising of the goods, and the extent (or valuation) of the lands ought to be per Sacramentum duodecim proborum & legalium hominum, &c. For the Sheriff himself cannot appraise the goods, nor value and extend the lands upon an Elegit: Neither can the Sheriff upon an Elegit, deliver any goods in execution, or extend any lands, but only such as are appraised and valued by the Jurors of the Inquisition. Co. 4. 71. Co. 4. 63. a. & 74. Dyer 100.

Execution per Elegit covient estre per inquisition.

Upon an Elegit or other writ directed and delivered to the Sheriff to extend any lands or goods, the Sheriff by vertue of the same writ may charge a Jury to make enquiry according to the same writ: And the Sheriff and Jury may go to the house or ground to be extended, or where the goods to be praised do lie, and there may appraise and value the same. See Semaynes Case. Co. 5. 91.

And the Sheriff and Jurors may go into the same house or ground (to that purpose) if the doors, or gates be open; but may not break open the gates or doors, &c. Ibid. & hic c.

The words of this Statute of Westm. 2. c. 18. are thus, Liberent ei medietatem terræ debitoris, *quel per construction del Ley, est* (medietatem) *de tout que il ad al temps ou jour del judgment done, ou al ascun temps apres.* Fitz. Execution 34. 249. Vide Co. L. 102. Co. 7. 39.

Auxy le Statute de Westm. 2. c. 18. est quod vicecomes liberet medietatem terræ, &c. *& per lequity del ceo, le vic. poit auxy deliver (al creditor, ou conusee) le moiety des rents.* Br. Elegit 13. Br. Parliament 102. Plo. 178.

Nota

Nota in veteri libro Intrac. que le breve de Elegit est quod liberet medietatem terræ, & Tenementorum suorum in balliva sua, & sic videtur que le dit Stat. de Westm, 2. *debet intelligi de terris & Tenementis, per hoc Verbum tr. tantum, coment le dit, Statute ne parle de hoc verbo Tenemento.* Br. Expos. 16. Elegit 13.

Auxy per les livers de Intrac. le quart part. dun mease poit estre Extend per un Elegit, *Et uncore mease n'est ter: Et sic habetur in usu de faire Extent. de moyety de Rent & hujusmodi.* Br. ibid.

L'execution per force d'un Elegit *serra fait del moyety per metes & boundes, & nemi per mie & per tout.* Vide 31. Ass.pl.

Sur Damages recover (in trespas, ou wast) le plaintiff preia Elegit *des ters que le def. avera jour Enquest prist, ou de brief purchase, & fuit deny a luy: Mes des terres queux il avera jour de Judgment rendue luy fuit grant* 42 E. 3. 11 N. bre. 166. & 167. & Fitz. Execut. 249.

Co. 4. 82. *Auxy ceux parols (in le dit Statute de* Westm 2.) quosque debitum fuerit levatum, *serra intend,* be or might be levied; *Car si le conusee, ou tenant per* Elegit *(ou tenant per Statute Merchant, ou Staple) neglect a prender les profits, uncore quant le conusie poit aver estre satisfie de son det solonque le extent, le conusor reavera son terre, mes il semble que ne poit enter in tiel case, mes est mise a son* Scire facias, &c.

Si tenant per Elegit, *&c. soit ouste per un estranger, la le temps incurgera, & il est mise a son remedy vers le trespassor.*

Ibid. *Si tenant per* Elegit *&c. soit interrupt de prender le profits del terre per reason del guerre (sc. que le terre ou profits fuit distroy per guerre) uncore il ne tiendira ouster, mes ceo serra in son disadvantage.* Fitz. Execution 146. & Co. 4. 82. *Ou le conusee, &c. tiendet ouster.*

Co 4. 82. 15 H. 7. 15. *Mes si les profits del terre sont degaste per surrounder del ewe, ou per wildefire, ou per ascun auter act de Dieu, sans default ou negligence del conusee, la le conusee (ou tenant per* Elegit, *&c.) tiender le terre ouster, sc. quousque soit satisfie de son det.* Vide Br. Statute Merchant 41.

Co. 4. 66. 15 H. 7. *Si le conusee soit ouste per tort, per le conusor, ou per ascun auter claymant southe luy (pur vie ou ans &c.) le conusee tiender ouster.* Co. 4. 66.

Issint si le conusee soit ouste per garden in chivalry. 15 Han. 7. 14. 15 Ed. 4. 5.

Si le feme le conusor recover dower, le conusee tiender ouster. Ibid.

Si cesty in reversion que est daver le terre, ousta le conusee, &c. il ad election, ou de tener, ou a porter son action. Co. 4. 82.

Si

Si le terres deliver in execution (sur Statute Merchant, Staple, ou Recogn. ou sur recovery de debts ou damages) sont loyalment recover, prise, ou evict del possession del conusee, &c. devant son det & damages sont satisfie, il avera Scire facias, &c. *& sur ceo novel brief de execution ou Reextent, pur lever le Residue.* Stat. 32 H. 8. cap. 5. & Co. 5. 87. Finch. 101. & Co. L. 289. 290. vide.

Reextent.

In trespas le plaintiff recover, & le defendant est prise pur fine le Roy, le plaintiff prie que le defendant remainer in prison tanque il soit satisfie, (come il poet) icy le plaintiff navera Elegit, *pur ceo que il ad prise execution de son corps: Mes si le party devy in prison, issint que il n'ad execution, ove satisfaction, la il avera* Elegit *apres, pur ceo que n'avoit satisfaction solonque son primer election, & cest est per le Statute en* 21 Jacobi. Co. 5. 87.

Costs & damages.

Mes apres satisfaction ewe, le conusor, in case de Elegit, *poet enter arere, car le conusee navera damages, costs, ne auter chose, mes solement le terre tanque le det soit satisfie, & pur ceo que tout est certain, le conusor apres lextent expire poet enter.*

Nota tamen que sur execution sur Statute Merchant, ou Statute Staple, le conusee avera ses damages & costs, outer son det, come parert per le Statute de Acton Burnel & de Mercatoribus [illegible] *per le Statute* 27 E. 3. cap 9. *& pur ceo in tiels cases, semble le* [illegible] *enter, apres lextent expire, mes doit aver* Scire facias, &c. [illegible] 15 Hen. 7. 15. & Br. Scire facias 32.

Nota que le conusor avera Scire fac. *deins le terme del extent, in ascun cases, & issint reavera son terre, Come.*

Si le conusor voile porter les deniers in court, deins le terme

Ou si le conusee soit satisfie deins le terme, per casual profit. 15 H. 7. 19.

Ou si le conusor obtain acquitance, ou release del conusee.

Vide plus *Termes del Ley*, tit. Elegit.

Copihold.

Cest Statute de Westm. 2. cap. 18. *ne extend al Copihold terres; Car serra prejudicial al Seignior, & encounter le custom del Mannor, que estranger avera interest in le terre tenus per copie, per le custom, car ceo ne poet estre transferre al ascun sans surrender, &c.* Co. 3. 9.

Auxi terre in Aunc. Demesne & rent issuant hors del ceo poet estre deliver in execution per force d'un Elegit, hic c. 26. & Co. 5. 105.

Ters del Evesque poet estre mise in Execution sur Elegit. Fitz. Execution 159. & Br. Elegit 23. (*mes Br. Elegit* 8. *contra.*)

Issint ters queux baron ad devant le coverture poent estre mise in execution. Ibid.

Ters que auter ad a mon use poent estre mise in execution. Br. Execution 72. Elegit 11.

In

In det vers le heir sur obligac. son pere, que pled riens per discent, & trove contra luy, per que le plt. avoit Elegit del moiety, cybien de son terre purchase come de son terre per Discent, ratione del faux plee. Br. Elegit. 24.

Mes si le heir ad estre condemn sur Nibil dicit, le plt. avera execution per Elegit forsque des ters discend in fee, & queux il ad jour del brief purchase. Dyer 81.

Co. 4. 74. *Terme pur ans ne poet estre extend per le vic. sur* Elegit, *sans trover le commencement & certeinty del terme, per inquisition: Car execution per Elegit covient estre per inquisition* (ut supra) *& si soit trove per le inquisition que le dettor fuit possesse de certain terre* pro termino quorundam annorum ad tunc ventur. *cel inquisition est insufficient, car covient trover le certeinty, & le reason est pur ceo que apres le det satisfie le party est de reaver son terme si ascun part de ceo remain; quel certainty del terme covient appear sur le retorne del vicount: come semble.*

Co. 4. 73. *Mes sur* Fieri facias *le vicount poet vender le lease ou terme sans reciter ascun certainty &c. le vic' poet reciter que le dettor ad un terme de tiel chose* pro termin. diversor. annor. ad tunc ventur. *& que il vend ceo per force dun* Fieri fac. *al* J. S. &c. *& ceo est bon. Issint si le vic. vend tout linterest que le dettor ad in le terre, ceo est bon, (nient obstant misrecital) car per common intendment le vic. ne poet aver precise conusance del certeinty del commencement, & certainty del fine del terme: Mes sil imprise a reciter le terme & misprise ceo (reciting ceo fauxment) & vend mesme le terme, ceo sale est void, pur ceo que nest ascun tiel lease ou terme; uncore nient obstant faux recital si le vic. vend auxy touts linterest que le dettor ad in le dit terre ceo sale est bon.*

Auxy le vic. ne besoigne de mention ascun certainty del terme in son retorne de Fieri facias, *mes generalment*, quod Fieri fecit de bonis & catallis, &c.

Nota que est al election del vic. de extender, ou de vender, un lease ou terme, tam diu que cest remaine in les maiens del dettor &c. le vic. a son election poet vender ceo tout oustrement; ou il poet extend & deliver ceo al conusee a certain annual value (come de franktenement) Et la le conusee a que le terme est deliver ad un property, le quel est incertain, & le lessee, (ou conusor) mesme ad auter property, issint que sur le payment del det, ou sur le det receive del revenue del ceo per le conusee, le conusor reaver son terme. Plo. 5. 24. vide Co. 8. 171. & 31 Ass. p. 6. 38. Ass. p. 4. & 44 E. 3. 16.

Nota icy diversity, le sale (per le vic.) dun terme, Et un extent dun terme; Et que sur sale dun terme per le vic. le party nad remedy daver son terme arere (si un ascun remaine) apres le det satisfie, come semble.

Nota que cest parol Extendere *(ou Anglice,* **Extend***) in nostre Ley, signifie de value le terres ou tenements de cestuy que est lie per Statute, ou Recogn. &c. (& ad forfeit son Recogn.) & a deliver eux al conusee a tiel indifferent rate, que per le annual vent, le creditor ou conusee poit in temps estre pay son det.* Co. 4. 67. **Extendere quid.**

Auxy ceo parol extent (Extentum) *ad deux significat. ascun foits cest signifie le brief ou commission al vic. pur le valuing del terres ou tenements; & ascun foits lact del vic. sur tiel brief.*

E Nota

Nota que apres Elegit, home n'avera Capias ad satisfaciendum, *en tant que le brief est Elegit Executionem, que touts foits est file sur le Roll, issint que le awarding del ceo est de Record; Mes ceo serra intend' quant le vic. ad Retorne le Elegit servy, la nul Capias gist apres: Mes si le vic. retorne Nibil, ore le party avera Capias; Issint ou le vic. retorne que il ad extend le terre del def. mes ne poet deliver ceo al plaint. intant que un auter ad ceo in Extent devant; Car (sur le matter) ceo est retorne Nibil, entant que le terre nest deliver al plaint. per* Wray *Chief Justice*, 30 Eliz.

CAP. 29.

Execution sur Capias ad Satisfaciendum.

Capias ad satisfac. A Capias ad Satisfaciendum, is a writ of Execution after Judgment, lying, only where a man recovereth in an action personal any debt or damages in the Kings Court; there the recoverer shall or may have this writ to the Sheriff, commanding him that he take the body of the party against whom the debt or damages is recovered, and him to keep in prison until satisfaction be made to the Plaintiff, &c.

And thereupon the Sheriff must arrest the party, and put him in prison, and there keep him without bail or mainprise, until he hath paid or agreed for the debt and the damages. Dr. & St. 18.

Nota que nul Capias ad satisfac. *gist al Common Ley (sur judgment pur debt ou damages) mes tantum quant le original action soit quare vi & armis, &c.*

Mes le Capias ad satisfac. *est done per un late Statute de q.* Vide Co. 3. 11. &c.

Et doit estre sue deins l'an & jour apres le judgment, &c. Co. L. 190. b.

And this Capias ad satisfaciendum, is only against the body, which being thereupon taken, the Sheriff must be sure to keep safe, or else he may perhaps pay the debt himself. And therefore if the Sheriff shall take a man upon a Capias ad satisfac. to him directed, (or shall have any prisoner to him committed for debt upon any execution, &c.) and he after shall let the prisoner to go at liberty before the debt be satisfied, &c. The creditor may either have his action of debt against the Sheriff, and shall so recover his debt: or the creditor may have his action of the Case against the Sheriff. 21 H. 7. 13. a. Fitz. 93. a. c.

Escape per consent. And if the prisoner do escape after that he is once in execution, if the escape be with the leave and consent of the Sheriff, or his Undersheriff, or Bayliff, Gaoler, or other Officer, Deputy, or Servant, then the Sheriff hath small remedy, or none at all: See Plow. 36. a. & Dyer 278. Co. 3. 52.

And

And yet one being in execution is suffered by the Sheriff to go at large for a time, by the consent and agreement of the plaintiff, and after the prisoner returneth again, it seemeth that he is in execution again, and that such his going at large was no escape. See Dyer 275.

But if the prisoner do escape of his own wrong (against the will of the Officer) although he escape and get out of sight or into another County where the Sheriff or Officer hath no authority, yet if fresh suit be made, and he be taken again upon the fresh suit, he shall be said to be still in execution: Coke 3. 52. vide 13 H. 7. f. 1. *Sans consent.* *Fresh suit.*

Co. 3. 44. 52. L. 5 E. 4. 12. Br. Faux. Imp. 18. Yea if the prisoner do escape against the will, and without the consent of the Sheriff or Officer, then the Sheriff or his Officer may take him again, where, or whensoever he can find him (by vertue of the same Writ before the return thereof) although it be in another County or Shire; And if that the prisoner which so escaped be followed with fresh suit, and taken again, before any action be brought by the Plaintiff against the Sheriff for the escape, it shall be adjudged no escape.

And if the Plaintiff hath brought his action against the Sheriff for the escape, before that the Sheriff hath taken the prisoner again: Or if upon the escape, the Sheriff or his Officers did not make fresh suit after the prisoner, yet in both these cases (if the escape were against the will of the Officer) the Sheriff may take such prisoner again, and keep his body in custody, until the prisoner hath made his agreement with the Sheriff: Or otherwise the Sheriff may have his action upon the case against such prisoner for such his wrongful escape (if the prisoner that so escaped be able to make him satisfaction:) and the prisoner in these cases shall not be relieved, because the escape was of his own wrong, and without the consent of the Sheriff or Officer. Co. 3. 52. Fitz. 95. c. & 130. b.

Issint si home in execution escape, & Gaoler luy reprist, il demurr. in execution pur le party arere, si le party voile, car lescape est de son tort demesne, & nul prender benefite de son tort demesne. 13 H 7. 1. & Finch. 12.

Nota que si un soit in execution sur erronious judgment, & puis escape, le vic. ne prender advantage de ceo error, mes serra charge pur lescape: Mes si le erronious judgment soit reverse (per brief de error) doncque le vic. nest chargeable pur lescape, car la il poet plead nul tiel Record. Co. 8. 142.

Si un in execution sur Capias ad satisfac. *(ou sur Statute Merchant, ou Staple) soit deliver hors del prison (& issint hors del execution) per brief de Priviledge del Parliament, ad estre tenus q. il poiet estre prise apres in execution arere, & que le vic. ne fuit chargeable pur tiel delivery del prison,* Dyer 60. *Mes de avoid. tout ambiguity, le Statute de* 1 Jac. c. 13. *ad ore donc novel execution vers le dettor, & auxi discharge al vic. &c. pur tiel delivery del prisoner.*

Co. 5. 87. *Si conusor dun Statute Merchant ou Staple, est prise & morust in execution, uncore le conusee avera execution de ses biens & terres,* Co. 5. 87. vide Stat. 21 Jac. c. 24.

Conusor sur Statute est prise & escape, uncore ces biens & terres, sur mesme le Statute, poient estre extend.

Car coment que per Ley, unica tantum fiat executio, &c. *ceo est destre intend dun execution ove satisfaction.*

Et nota que la est diversity inter un execution que est valuable, come de terres, ou biens, & exution que nest valuable, come del corps. Ibid.

Auxy la est diversity inter un execution final, per que le party est satisfie (come lou le vic. levy les deniers del biens del defendant, ou extend ses terres, & deliver eux al Plaintiff, icy le Plaintiff accepting ceo in satisfaction, il ad le fine de son suit) & inter execution ove un quousque &c. & que nest final, come ou le corps est prise in execution sur Capias ad satisfaciend. &c. *Intent de que est tantum que le defendant satisfier le Plaintiff, Et son imprisonment nest absolute, mes quousque le def. satisfie le Plaintiff.* Co. 5. 87.

Ou 2. homes sont condempnes in det, & lun est prise & morust in execution, uncore lauter poet loyalment estre prise in execution. Co. 5. 86.

Issint si deux sont oblige joyntment & severalment in un obligation, Et lun est sue, condempne, & prise in execution, uncore lauter auxy poet estre sue & prise in execution, tanque le Plaintiff soit satisfie in fait de son entier det. Co. 5. 86.

Si home ad judgment in action de debt, & puis le judgment utlage le Defendant, icy si le def. soit prise per Capias utlagatum *al suit le Roy, il serra in execution pur le Plaint. sil voet.* Co. 5. 88.

Auxy in touts cases quant le Plaintiff poet aver Capias ad satisfac. *& le def. est prise per* Capias pro fine, *la le def. est in execution maintenant, si le Plaintiff voet, sans ascun preir del party.* Co. ibid.

Et in tiel cases si le vic. suffer tiel prisoner daller alarge, ceo semble destre escape, & que pur ceo le vicount est subject de payer le Plaintiff son debt. Fitz. 121. P.

Et uncore vide Dyer 306. *Ou home avoit judgment d'aver execution per default, sur second* Scire fac' *retorne nihil sur recogn. in Chancery, & fuit in execution in le Fleet pur auters causes, & le garden del Fleet monstre al Court que le def. fuit in execution pur certein causes, mes ne monstre queux, & sans request le Plt. & le Court command le gardein del Fleet de garde le prisoner pur le debt de dit recogn. Et apres le gardein luy lessa alarge, le conusee nient satisfie, & fuit tenus que le gardein ne fuit per le Ley chargeable al conusee, pur le dit escape; Car le prisoner ne fuit unques loyalment in execution al party Plaintiff, pur le debt, eo que le execution fuit fait ad petitionem querentis, & execution sans request le Plaintiff, nest execution pur le Plaintiff, mes poict estre que il voile eslier auter execution.*

Escape. If the Sheriff, or any of his Officers, do suffer any prisoner being in execution, to go at liberty before the debt be satisfied, the creditor may recover his debt against the Sheriff, as is aforesaid. Co. 3. 44. & 8. 100.

So if the Sheriff, or his Officer shall suffer any such prisoner to go out of prison, by bail, mainprise, or baston (sc. with a keeper, or with the servant of the Sheriff, Warden, or Gaoler, &c.) before the debt be satisfied, or without agreeing with the party, at whose suit he is in execution, (except it be by the Kings Writ) the Sheriff shall be answerable for the whole debt. For by the Law those which are in execution, ought not to go at liberty within the prison, much less Plo. 360. a.

abroad

abroad though with their keeper, or by baston; but such prisoner ought to be kept in salva & arcta custodia; yea the Sherift may keep such as are execution, in fetters, to the intent that they may the sooner pay and satisfie their creditors; see the Statute made 13 E. 1. c. 11. & 1 R. 2. c. 12. Fitz. 93. c. & 121. a. & Dyer 149. And yet see Sir Edw. Coke upon Lit. fol. 260. that imprisonment must be Custodia, & non poena; for Carcer ad homines custodiendos, non ad puniendos dari debet. *Prisoner coment serra demesne.*

Co. 3. 44. And yet note a difference between the custody of one in execution within the County (or Franchise) where the common Gaol is, or where the Office of the Sheriff or Bayliff extendeth, or reacheth, and where the Sheriff or Bayliff hath the custody of one in execution, out of their County (or Franchise) by vertue of an Habeas corpus, &c.

For if the Sheriff (or Bayliff of Franchise) shall agree that one who is in execution, and under their custody, shall go out of the Gaol, or at liberty, for a time, and then return, although the prisoner return at the time, yet this is an escape, and the Sheriff (or Bayliff of a Franchise) shall pay the debt.

Co. 3. 44. But where the Sheriff, &c. hath one in execution for debt, and a Habeas Corpus cometh to him to have the body in the Kings Bench (at Westminster) at a certain day, and he carrieth his prisoner to London (to an Inn, &c.) and the prisoner of his own head goeth at large, and after cometh again to the Sheriff, so as the Sheriff at the day of the return of the writ (of Habeas corpus) doth deliver the body in Court, this was adjudged to be no escape, for that the commandment of the writ is performed, sc. to have the body in Court at such a day: and in such case the Sheriff may go and take what way, or place he shall think to be most sure and safe for himself and to carry his prisoner.

If the Sheriff shall arrest one upon a Capias ad satisfac. and after the prisoner is rescued from him, this is an escape, and the Sheriff is chargeable for the debt. Dyer 241. 10 H. 7. Cromp. 207.

If the Sheriff shall arrest one upon a Capias ad satisfac. and shall not return the writ, this is an escape, and the Sheriff is chargeable for the debt, neither may the Sheriff arrest the party again for the same cause. 4 E. 6. 13 H. 7. 1.

And yet if the Sheriff after the execution duly done, shall satisfie the Plaintiff, he needs not to return his writ, hic c. 54.

Also by the opinions of Coke and Billing. 15 E. 4. Br. Escape 11. where a man is in the Sheriffs custody upon an execution, if the Sheriff shall carry his prisoner into another County, the prisoner may have a writ of false imprisonment against the Sheriff, for that it is against law, and the Sheriff is no Sheriff in the other County, and therefore the prisoner shall be intended to be out of ward when he is in another County, except it be by the special commandment of the King, or his Chancellor, or other his Justices, for in those cases he shall be intended to be still in ward.

And yet sometimes the act or commandment of the Kings Court is no sufficient warrant to the Sheriff, &c. to suffer a prisoner in execution to go at liberty, for there is a case reported by Master Serjeant Benlow, Anno 16 El. how that W. Manser brought an action of debt against B. Ansley Warden of the Fleet upon the escape of a prisoner there in execution for 154 l. and the defendant pleaded that H. Draycot who was in execution, was before Bayliff to the Queen (of her lands late parcel of the Monastery of Tucksbury, in the County of Staff.) and was found in arrerages, for which he was committed to the Fleet by the Barons of the Exchequer, and after by their commandment, he suffered the said Draycot by baston (under the custody of one of his servants) to go into the County of Derby, to gather up his debts, &c. to pay the Queen; and pleaded all in certain, and upon this plea, the Plaintiff demurred in Law, and after argument, Judgment was given for the Plaintiff. Quod nota. See the like Case in Cromp. Author. des Courts, fol. 106. One in the Fleet upon an Execution for the Kings debt (committed out of the Exchequer) was also there in Execution at the suit of another out of the Kings Bench, and after the Treasurers and Chancellors of the Exchequer commanded the Warden of the Fleet to suffer the Prisoner to go with his Keeper into Norfolk to hasten the payment of the Kings debt: whereupon the party at whose suit the prisoner was there in Execution (out of the Kings Bench) brought his action of Debt against the Warden of the Fleet (in the Common Place) for the escape, and yet the prisoner came with his Keeper to the Fleet again, and was never out of his custody: and yet it was holden by the opinion of all the Judges of both Benches (tempore Mariæ Reginæ) that the action would lie.

16 E. Rot. 1343.

Another like Case you may find in Dyer 297. and there it was adjudged, *Que si un soit in execution, nul commandment del Roigne mesme, sans brief, est sufficient garrant de discharge le Keeper, &c. Et per mesme reason ne discharger le Vicount.* Vide 7 H. 6. fol. 5. & 4 E. 4. fol. 17.

And yet one being in execution within the Cinque Ports, was brought before the Council at London, and that was held no escape. Cromp. 214.

Auxy si le vic. avera brief south Signet le Roy, commandant luy de lesser un in execution, d'aller hors, que accordant lessa le prisoner d'aller hors ove baston, semble ceo ne excuse le vic. vers le party pur le Condemnation. Dyer 162. vide Fitz. 89. aut. tiel. Case.

Et per omnes Justic. de utroque. Banco An. 4 & 5 Ph. & Mariæ, *fuit tenus que un in Execution ne serra dismis per Protection de Servic. Regis, uncore fuit home very necessary pur le service le Royne, &c.* Dyer 162.

Auxy vide 13 H. 4. 17. *Ou le vic. pur executer del commandment le Roy in tortious acts serra punish & ou nemy.*

Yea somes the Kings Writ under the Great Seal, is no sufficient warrant to the Sherift to deliver a prisoner, &c. See hic c. 21.

And yet see 14 H. 6. 1. Br. Prerog. 37. that he which is imprisoned (by writ) for a contempt, may be discharged by the Kings commandment, by word without writing: But Master Bro. maketh a Quære of it.

Also

Also if any Knight or Burgess of the Parliament (or any of their necessary attendants) shall happen to be taken upon any Execution, during the Session of Parliament, the Sheriff ought to deliver such prisoner, being sent for by the House. Dyer 60. See hic cap. 21.

But if any Officer of the Chancery, or any necessary Officer in any other of the Kings Courts, or any of His Majesties Servants shall happen to be taken upon an execution, the Sheriff ought not to deliver them upon their Writ of Priviledge; for then the party should be without remedy, if the prisoner should be enlarged and set at Liberty. Cromp. Author. des Courts 48.

And note that in as much as escapes are so penal to Sheriffs, Bayliffs of Liberties, and Gaolers, the Judges of the Law have always made a favourable construction as much as the Law will permit, in favour of the Sheriffs, Bayliffs of Liberties, and Gaolers, who are Officers and Ministers of Justice, Co. 3. 44.

Mes sur escape, Det ne gist vers le heir, Nec vers l' executors; car l' offence n'est forsque trespass, quæ moritur cum persona. Dyer 271. & 322.

Co. 5. 88. *Auxy nota si home recover det ou damages vers auter, il poit eslier d'aver Capias, ou Elegit, mes s'il prist le Capias, il n'avera le Elegit apres*, nec è converso, 15 H. 7. 15. Vide hic antea tit. Elegit.

Nota que ou Capias gist in process, la apres Judgment Capias ad Satisfaciendum gist. Co. 3. 12.

Mes le party navera Capias ad satisfac. Mes ou Capias gist in le Original. 11 H. 7. 15. Keeble.

Sur Recogn. la ne issera Capias en l'orig. Nec Capias ad satisfac. vide hic ante Recogn.

Sur Attachment de Priviledge in Trespass Capias ad satisfac. fuit agard per Ritche un des Attorneys del Bank, vers un Kempe, &c. 2 Eliz. Dyer 192. *Sed per luy* Quære *si Capias ad satisfac. in Casu supra fuit bien agard, pur ceo que nul Capias, ne proces de utlary gist sur le Original, sc. sur tiel suite de Attachment de Priviledge.*

Nota que cestuy que recover Det ou damages in Court le Roy per tiel action lou Capias ad Respond. gist in Process, il deins un An apres le recovery poiet aver un Capias ad Satisfac. &c. Mes si nul Capias ad respondend gist in le primier action, donque le Plt. n'avera Capias ad satisfac. Mes doit aver un Fieri facias, *ou un Elegit, deins l'an: Ou un* Scire facias *apres le An ou deins le An s'il voile.* Dr. & St. 18.

Auxi si un preia un Fieri facias, *il poiet apres aver un Capias, & apres le Capias, il poiet aver le Elegit: Mes s'il preia le Elegit, il n'avera james Capias, ne* Fieri facias. *Ou s'il preia Capias, il n'avera apres un* Fieri facias. Vide hic c. 28. & 30.

Nota auxy que devant le Statute de 25 Ed. 3. c. 17. *un Capias ne gist in det, Ne le corps del defendant, devant cest Statute fuit subject al execution pur det, (sinon in case le Roy.)*

Sur

Sur Judgment in action de Trespass, Capias ad Satisfac. gist deins l'an, a prender son Corps in execution pur satisfaction del Damages: mes ceo ne gist in ascun real action (come in brief de dower, ou auter Præcipe quod reddat*) neque a le Common Ley, in det, Detinue, ou Accompt; mes in action de Trespas, ou tiel.* Fitz. Exec. 164. Co. 3. 12. & Finch. 103.

At the Common Law, the body of a man, nor his lands, were not liable to an Execution for debt or damages, except only in the Kings Case, or in some other special case, Plow. 441. Co. 3. 11.

Neither was the body of a man subject to imprisonment, by the Common Law, except in some special cases.

The body was first subject to imprisonment for debt, by these Statutes.	52 H. 3. cap. 23. / 15. E. 1. cap. 11	Accountants.
	13 E. 1. de Acton Burnel / de Mercatoribus	for debt upon a Statute.
	25 E. 3. c. 17. for debt upon specialty or contract, sc. by Capias (upon the Original, &c.)	
The lands, were first subject to be extended, sc.	The moiety by the Stat. 13 E. 1. (Westm. 2.) c. 18. which Statute giveth the Elegit, and is the first Statute which subjects the land.	
	The whole land by the Statutes of	13 E. 1 de Merc'. / 27 H. 3. c. 9. / 23 H. 8. c. 6.

At the Common Law, where a common person sued a Recognisance, or a Judgment, for debt or damages, he had execution in such case, only of his goods and chattels, and corn and other present profit which grew upon the Land, To which purpose the Common Law gave to him two several Writs; the one, a Levari facias, by which Writ the Sheriff was commanded, Quod de terris & catallis ipsius *A.* &c. Levari faciat prædictam pecuniam, &c. ita quod eam habeat in, &c. tali die præfato *B.* (quærenti) deliberand, &c. The other writ is called a Fieri facias, which was only, de bonis & catallis. Fitz. 101. — *Levari fac.* — Co. 3. 11, 12. Finch. 101. — *Fieri fac.*

So then this writ, de Levari facias, is given by the Common Law, (before the Statute of Westm. 2. c 18. which giveth the writ of Elegit, as is aforesaid.) And this Levari facias is only to be executed upon the profits of the lands, (sc. the Corn and Grass growing) and upon the goods: Or the Sheriff may hereupon take the Rents payable by the tenants in execution for the debt, and bring them in Court; but he cannot seize the land and deliver that to the party, by this writ, &c. Plo. 441. a & Finch. 101. And this ought to be sued within the year, after the day of payment to be made by the Recogn. (or after the Judgment.) For after the year, the cognisee (or plaintiff) is now by the Statute of Westm. 2. c. 45. to have a Scire facias, whereby the Sheriff is commanded, that he give knowledge to the defendant, that he appear in the Chancery, or before the Justices, at a certain day, there to shew what he can say, why he should not pay the debt, or damages: And if he being warned, do not come at the day, or do come, and can say nothing why execution ought not to be done, then the Sheriff shall be commanded to do execution. See Fitz. 266 c. — Fitz. 265. g. — Fitz. 265. d. — *Scire fac.*

And if the Sheriff, upon the Levari facias, shall return that he hath levied part of the sum (sc. 20 l. part thereof, &c.) the which he hath delivered to the party, &c. now upon this return, the party which ought to have the money, may have a Sicut alias levari fac' directed to the Sheriff to levy the residue of the sum, &c. Fitz. 265. h.

In debt, le Execution quant al terre serra de quecunque terr que le party avoit jour del judgment rendue. Viel Nat. bre. 165. 42 E. 3. 11 2 H. 4. 14. & Finch. 101.

Mes quant al Chattels (coment que soit lease pur ans) le execution serra forsque de ceux que le party avoit jour de Execution sue: Issint que si le party vend ses biens bona fide, apres judgment, & devant brief de execution sue, les biens sont liable al Execution. Finch. 101. Co. 8. 171.

Touts les biens queux sont al def. al jour del Teste del brief de Execution, sont liable al Execution del Plt. Et coment le def ad vend eux bona fide, uncore le vic. poit eux seiser in les mains del vendee per le dit Execution per curiam. Mich. 37 Eliz. & Co. 8. 171. *que apres Execution agard, sale de biens coment* bona fide, *nest bon, mes serra liable al Execution.*

Si le baron soit possesse d'un terme pur ans in droit sa feme. Sur un Execution vers le baron pur son debt, le vic. poiet vender le terme dur. le vie le feme. Et issint ceo dun estate sur Statute Merchant, Statute Staple, Elegit, wardship (in Chivalry) & auters Chattells realls in possession. Vide Co. L. 351. a.

Mes un estate pur vie, ou auter greinder estate ne est vendable per le vic. pur debt: Sed les terre serra extend al un Annual value, de satisfier le debt.

CAP. 30.

Execution per Fieri fac'.

A Fieri facias, is a writ judicial, that lieth for him which hath recovered any debt or damages in the Kings Court, and thereby the Sheriff is commanded to levy the debt or damages of his goods, against whom the recovery was had. *Et gist touts temps deins l'an & jour.*

This writ of Fieri facias is only against the goods and chattels of a man, sc. Leases for years, &c. Corn growing or sowen upon the ground, or moveable goods, as cattel, corn in the barn, &c. houshold-stuff, money, plate, apparel, &c. And this writ also ought to be sued within the year after the Judgment, &c. Co. 3. 12. vide Co. L. 290. b.

But here the Sheriff and his Officers had need to be very careful, how and after what manner they do execute this Writ; for if the leases, or goods, which they shall take in execution, be not the defendants own goods, or leases, but the goods of a stranger, although they may or do find them in the possession of the defendant (which is the best colour in law to prove them to be his, if the defendant notwith-

standing his sale or gift of them, shall still use them and take the profit and benefit of them) yet if it shall fall out and be found upon trial, that such goods and chattels be not the defendants own, then the Sheriff or his Officers which shall take such goods in execution, (upon such a Writ) in stead of the defendants goods; the Sheriff or Officer shall be a trespasser to the right Owner of such goods, and the Sheriff or Officer in such case shall pay damages to the Owner of the goods to the value of the goods so taken, and costs of suit; although the Officer hath delivered them to the plaintiff in execution. Keil. 119. 120.

Or if the Officer shall not deliver such goods to the plaintiff in execution, but that the Sheriff shall return his Writ that he hath taken so much goods of the defendants, and that he hath denarios illos paratos ad reddend. to the Plaintiff, then is the Sheriff at a double mischief; for although the value of the goods be recovered against the Sheriff or his Officer, by the owner of the goods; yet the plaintiff in the action, may within the year after execution done, have a Scire facias upon the judgment and the return made by the Sheriff, and thereby shall compel the Sheriff to bring the money into the Court, and after the year the plaintiff may have an action of debt against the Sheriff for it, if he be not otherwise ordered by the Court where the judgment is depending.

And therefore the surer course for the Sheriff in such case is either to keep the goods, until the parties be agreed, or else to take good security of the plaintiff to defend him and save him harmless, and to stay the returning of his writs until he may be well advised what to do therein; But if he take a bond of the plaintiff, it is questionable whether it be good or no in Law, and not within the compass of the Stat. of 23 H. 6. c. 10. to be taken colore officii.

But the safest and surest course for the Sheriff, or Officer, is, to enquire by a Jury in whom the property of the goods is; or else not to take in execution, or not to meddle at all with any such goods as shall not plainly appear to them, to be the proper goods of the defendant: For it seemeth that the Officer is bound at his peril, to take knowledge whose the goods be, or at least, that they be the proper goods of the defendant: but being found by the Jury, that excuseth the Sheriff.

Also if an Officer shall arrest another man who is not the defendant, or shall attach goods which are not the proper goods of the defendant, in both these cases the Officer is a trespasser; And if the plaintiff shall shew unto the Officer the man, or goods, and shall say to the Officer, that this is the defendant, or these are the goods of the defendant, where they are not, there both the Plaintiff and the Officers are Trespassors. See Doct. & Stu. 150.

J. S. riding upon his Masters horse to C. and there one enters a Plaint against J. S. the servant, and attacheth the said horse, whereupon the Master of the said servant brought an action of Trespass against the Bayliff which attached the horse, and had judgment to recover against the Bayliff &c. for that the Officer is bound to take knowledge whose goods he attacheth. Br. Trespass 99.

Goods pawned or gaged for debt, cannot be taken in execution: Nor goods demised, or letten for years: Nor goods distrained. Vide Br. Pledges 28.

When

When the Sheriff hath taken any cattel in execution, he may put them into a Castle, or other place, where he thinks most fitting and safe to keep them until he can sell them, or he may keep them himself, till he can sell them.

But upon a Fieri facias, if the Sheriff shall levy the money, and shall keep the same still in his hands, the party Plaintiff may have his action of Account against the Sheriff. And if the Sheriff shall return Fieri feci, sed non inveni emptores, then a venditioni exponas shall go out, *Mes le party plt. navera unques un novel execution.* 13 H. 7. f. 1.

Upon a Fieri fac. to levy 20 l. the Sheriff returneth Quod feci de 10 l. quas habeo ad diem, &c. at which day he hath not the money, and a new Sheriff is chosen, here the Plaintiff shall have a Scire facias against the old Sheriff, to shew why the Plaintiff should not have execution of the 10 l. and if the Sheriff cannot discharge himself, then the Plaintiff shall have execution against the Sheriff by a Fieri fac. or Elegit, 9 E. 4. fol. N. bre. 165.

Vide plus devant tit. execution sur Statute Staple; & execution per Elegit.

Est al election de cestuy que recover debt ou damages; de aver execution per Fieri facias, *ou per Elegit.* 13 E. 1. c. 18.

Nota que Fieri facias *gist tout foits deins le Ann. & jour, & apres l'an. & jour covient de suer un* Scire facias. *Termes del Ley.*

Et nota que apres le Fieri facias *un home poet aver le Elegit*; Sed non e contra; *entant que le Elegit est de plus haut nature que le* Fieri facias.

Dyer 103. Co. 4. 72. *Sur Elegit, Execution, & apprisement covient estre fait* per Sacramentum 12. &c. *& nemy per le vicount, mes auterment est de Execution per* Fieri facias.

Co. 8. 96. & 171. *Sur* Fieri facias *le vicount poit vender lease, ou terme pur ans (sans enquiry del value del Lease per Jury.)* Vide antea Execution sur Elegit, Dyer 363. & Co. 8. 143. *que le vic. est command & compell. per le brief de vend.* For the words of this writ be Præcipimus tibi quod de terris & catallis præd. *J. S.* in balliva tua Fieri fac. Centum solidos, & illos habeas, &c. ad respond. &c. Register 58. *Uncore le seisures del vic. ne alter le property, tanque sont vendus.* Dyer 99. & Gawdy Justice accord. Anno 3 Jac. Regis.

Sur Fieri facias *le vicount doit vender pur levier le det.* Co. 5. 90. Vide Co. 8. 171. & 143. *Et nul enquest besoigne destre prise sur ceo.*

And yet upon a Fieri facias the Sheriff may either praise and sell the goods without an enquiry, or else he may praise the goods by a Jury, and then sell them, which seems to be the more safe and indifferent way.

Sur execution le vic. ne doit deliver le argent al Plt. mes il doit deliver ceo in Court, & le Court ceo delivera al Plt. per Cur. Mich. 36 Eliz. vide 21 H. 6. fol. 5. & Fitz. 265. c. h. *uncore ses* Capias ad satisfac. *ou ses* Fieri facias, *si le vic. pay le money al Plaintiff, semble bon &c.* Vide hic c. 38.

Reverse per Error.

Sur Fieri facias *si le vicount vend les biens, & apres le judgment est reverse in brief de* Error, *uncore le defendant navera restitution de ses biens; mes le value del eux, pur que ils fuer. vend: & ceux que issint achate tiel biens del vic. poient loyalment enjoyer eux. Car le vic. que fist le sale avoit loyal authority a vender, & per le sale le vendee ad absolute property in les biens, &c. Et si le vendition del vic. per force del* Fieri fac. *serra avoid per subsequent reversal del judgment, donque nul voile achater, & per consequence nul execution serra fait.* Co. 5. 90. & 8. 96. & 143.

Et accordant a ceo est le case in Dyer 363. *Lou le vicount in execution dun* Fieri fac. *vend un terme del def. per brief de venditioni exponas, & in Court deliver les deniers al Plaintiff, & puis le judgment fuit reverse pur errors, & per l'opinion del* Manwood, Dyer, *&* Wray, *le Terme ne serra restore, eo que ceo fuit vend loyalment, sed le argent que viet in loco Termini serra tantum restore.*

Sur Fieri fac. *le vicount execute le brief, mes ne retorne ceo, uncore bon.* Vide hic postea c. 38.

Fieri fac. *issist vers un* Vincent, *& devant l'execution il devy intestate. L'ordinary commit le Administration, & le vic. levy l' execution sur les Administrators, & deliver ceo al party;* Quære *si l' execution fuit bien levy sur le Administrators.* Dyer 76.

Le vic. avoit Fieri fac. *a luy deliver vers* A. *& apres* A. *morust & donque le vic. (ou son bayly per son garrant) execut. le brief, & fuit tenus per* Wray *&* Gawdy *que le execution fuit bon, & loyalment fait sur le executors ou administrators. Car les biens queux* A. *avoit al temps del execution agard, sont liable in mains d' ascun estranger. Ou in quecunque mains ils devient, & donque le mort del party ne poiet defeat le execution. Ceo fuit le case dun* Pierce, *vers* Mouse, Hoo, *& auters.* H. 33 Eliz. Rot. 31.

Auxi si home vend ses biens devant execution, & apres judgment, & Fieri fac. *issuit vers cestuy vers que le recovery fuit, Ceux biens in le mains le vende serra mise in execution, per* Wray, *&* Clinch, *in Casu prædicto.* Vide hic c. 29. Contra.

CAP.

CAP. 31.

Now followeth the Manner and Forms of such Precepts, Proces, or Writs which go out upon the Original, and whereby the Defendant is called or brought into the Court, &c. and how the Sheriff, &c. is to execute the same, &c.

Summons.

MR. Lambard saith, that the Saxons (our Ancestors) their proceedings in Judgment was de plano, and without solemnity, They not using to call the parties by any Writ, Proces, or writing, but to send for them by certain messengers, which they termed Thems, that is to say, Ministers or servants.

Also he saith, that when that manner of summoning by writ was first brought into use here, yet were not those Writs made in the Kings Name, nor sealed by the Lord Chancellor; For it is to be seen in Mr. Glanvile, that the original writs of his time had this form, sc. teste Ranulpho de Glanvilla, &c. which then was the name of the Chief Justice of the Kings Court, under whose sealing they passed abroad.

But at this day all Procefs are to be made out in the Kings Name only. 27 H. 8. c. 24.

And all Writs or Proces concerning the Common Law, shall be awarded under the Great Seal of England, 28 E. 1. c. 6. Vide plus hic fol. 222.

Summons is a Writ directed to the Sheriff, &c. to bring in the party by a day; Or to cite or warn one to appear at a certain day and to answer, &c. sc. in jus vocare, and the summons must be made by (or in the presence of) two or three summoners, and these summoners ought by Law to be boni (vide Co. L. 158. b.) liberi & legales homines, and neighbours, as it seemeth. And Sir Ed. Co. L. 6. b. saith, that a summons of the tenant must be proved by two or three witnesses. *Summons.*

The Summoneas is the original Proces, and goeth out of the Chancery.

And in Real actions the Sheriffs order to serve or execute this Proces, is to go himself, or to send his Bayliff to the land with the Summoneas, and there to garnish, cite or warn the tenant or party, by sticking up a white stick in his land, which done, the Sheriff must return two common pledges for the Plaintiff, and then the names of the summoners, thus,

Pledg.

Pleg. de prosequendo { Johan. Doo. / Ricardus Roo.

Summonitores Infranominati *J. S.* (the Def.) { Ricardus De. / Henricus Ferr } See hic cap. 45.

Mes si le Plt. intend de outlawer le def. donque il obtain un summoneas direct al vic. de garnish le party, & sur ceo le vic. retorne nihil habet, & donque le Plt. procura Capias de prender son corps, & apres un Alias, & Pluries, & donque un Exigent, come patet hic postea.

See hic c. 50. another manner of Summons of the Recognitors in assise.

Note that this summons (or warning) of the Defendant to appear and answer, &c. is so necessary by the Common Law, as that without the same, all the proceedings, yea, and the judgment after, are oftentimes frustrate and erroneous, and besides the Sheriff subject to danger and punishment.

And therefore if a man recover in writ of Dower, or Wast, &c. by the default of the Defendant where in truth he was not summoned, (nor attached, nor distrained) the Defendant may have a writ of Disceit against both the Sheriff and the Plaintiff. Fitz. Disceit 3. 5. & 56. & Fitz. N. bre. 105. a.

Ac etiam pur default de le Summons, le Defendant serra restore a son terre. Fitz. Disceit 7. & 48. & Fitz. 98. b. d. vide plus 7 H. 6. 38. & Dyer 353.

Auxi in brief vers A. & B. & E. *(le feme de* B.*) per divers Præcipes, in le Summons* E. *fuit omitt, & le brief abate pur ceo.* 2 E. 3. 39. 8 E. 3. 44. & 27 H. 6. 6.

Auxi in brief de Dower per several Præcipes, le nosme del un des tenants fuit omitt. in ceo clause del brief unde queritur, &c. Et auxi in le summons, per que le brief fuit abate envers eux touts. Fitz. bre. 671.

Et per le liver appell le Mirors des Justices, libro. 2. Nul est tenus a responder a nul action real, ne mixt, avant summons fait avener.

In a writ of Trespas, the Sheriff returned Non est inventus, whereupon a Capias issued out to take the Defendant who afterwards came into the Court, and said that he was sufficient, and that he might have been summoned, and prayed a writ to cause the Sheriff to come to answer to the King, and to the party, for his false return, and he had it. Fitz. Proces 55.

Nota le original Process in real actions, est un summons, & apres sil ne veigne, un attachment issera, & apres distress infinite. Finch. 94. & 106.

Mesme Proces (sc. *Summons, Attachment, & Distress infinite) est in touts actions personals, si non in trespas, in que est nul. summons, mes tantum attachment, & distress.* Finch. 106. vide hic c. 112.

Mes per le liver appell le Mirror des Justices, lib. 2.

Real

Real actions per summons.

Personal actions, per attachment de corps.

Mixt, primes per summons, & apres per attachments.

Also note, that in real actions the Sheriff (or his Officer) ought to summon the tenant upon the Land. Dyer 104. 22 H. 6. 38. vide.

But in an action of debt brought for damages recovered in a writ of entrie, &c. the summons shall be to the person. 22 H. 6. 38.

In a Petit Cape the Sheriff must summon the tenant to answer to his default, and to hear his judgment in regard of his default, sc. upon his default, after plea, issue or demurrer. Finch. 87.

But in a Grand Cape the tenant shall be summoned to answer to the default, and further to the demandment.

In summons in real actions, the summoners in the presence of the Pernors or Veiors, &c. ought to summon the tenant, first to keep his day of the return (and to name that in certainty) to answer to the Defendant, &c. Secondly, they ought to name the name of the demandant; and lastly, they ought to name the land in demand. Co. 6. 54. Vide hic c. 75. & 70.

This word Pernor seemeth to signifie the pernor or taker of the profits of the land; quære, or the occupier or farmer thereof. Vide Finch. 86. *Pernor.*

And the word Veior, to signifie such as are sent by the Court to take view of the place in question, for the better decision of the right. Minsh. Vide Co. L. 259. b. *que le summons doit estre per summoners & veyors, & le ter. serra prise in les mains le Roy per le Pernor.* Vide Fitz. 86. *que sur le Grand Cape le vic. est de prender le ter. in mains le Roy, per le view de legal homes, queux sont appell veyors, les auters pernors.* *Veior.*

And the Sheriff by force of the Præcipe, may come upon the land with the summoners, and there summon the party against whom the Præcipe is brought; yea, if the Sheriff by information of the demandant shall summon the tenant in another mans land, the Sheriff shall be excused. Doct. & Stu. 150.

But the Summons (in a Præcipe) ought always to be done in the day-time, (sc. between Sun-rising and Sun-setting) and not in the Night.

Note that the Defendant (in every writ) ought always to be summoned fifteen days (at the least) before the day of the return of the writ. See Stat. 28 E. 1. c. 15. Fitz. 177. d. Br. Sum. 6. Et hic postea tit. Proclaim. & Attachm. Co. L. 134. b.

32 H. 6. Note also that the Sheriff, &c. cannot summon the party by a rent-service, rent-charge, common, reversion, nor the like; for that the soil is another mans Freehold. Br. Retorne de breve 124. & Sum. 14. *Per vel chose.*

And yet in case where tenant for life prayeth in an aid of him in reversion, and a Scire facias goeth out to warn or summon him in reversion, and the Sheriff returneth that he hath nothing in that County but the reversion of that land in which he hath summoned him, it is holden to be a good return; for he shall be summoned in terra petita; and yet it was another mans Freehold. 38. Aff. pl. 12. so Aff. pl. 8. & 45 E. 3. Vide Br. Sum. 12. 16. 21. 23. 24. Fitz. Ret. 101.

Where the action is to recover the Freehold of land it self, the summons must be made in the same land. Finch. 344.

Where the action is brought against one as heir, there the summons must be in land that did descend. Ibid.

Mes si le tenant ou def. appear nest material in quel terre il est summon. Ibid.

Upon a Præcipe, if the Defendant be not Tenant of the land, &c. yet the Sheriff is to summon him in terra petita, eo quod petens testatur quod tenens est. Fitz. Ret. 97. & Br. Summons 23.

And indeed the writ commandeth (the Sheriff) not to summon the Tenant upon his own land, but generally that he shall summon him, naming not in what land; and then by a Maxim in Law it is taken that he shall summon him upon the land in demand. Doct. & Stu. 150. Vide Kitch. Ret. bre. 54.

In a Cessavit, the Tenant was summoned in other land which was not in demand; he shall not plead this; but if he makes default, and a Grand Cape is awarded, he may wage his law of Non-summons; but if the tenant appear upon the summons, it sufficeth in what land soever he were summoned. Br. Sum. 7.

Nota quant le tenant appear per le summons, il ne prender advantage apres, adire que il ne fuit bien summon: Eadem Lex *sil soit essoine, car tout ceo affirm le summons.* 46 E. 3. Br. Sum. 22.

If the Sheriff shall return one summoned who was not summoned, the Sheriff is punishable. Vide hic c. 70. & 85.

Note also if the Sheriff shall summon him which hath no land, to or by his person, and shall return him summoned, it is good: and in actions of Annuity, Covenant, or the like, summons is the Proces, whether the party hath land or not; and where a man hath no land whereby he may be summoned, there the Sheriff may summon him by his person. 33 H. 6. 42. 4 H. 7. 7. Br. Sum. 1. 7. 8.

And so in all personal actions, the Sheriff must summon the defendant by his person, 22 H. 6. 38. a.

A man may be summoned by his goods, sc. in assises.

In a Scire fac. against a Clerk, the Sheriff is to summon him only by his Land, (if he hath any lay-fee) or by his person, but not by his goods: by Prisot, 32 H. 6. f. 11. Fitz. Ret. 23.

Of

Of Novel disseisin and Nusance, where the Original Process is an attachment, &c. Pone per vadios & salvos Pleg. there the defendant may be summoned, &c. attached by his goods. Finch. 315. & 90.

In a Præcipe quod reddat the tenant vouched a Bishop to warranty, part of whose temporalties were in the Kings hands; he shall not be summoned in his temporalties so long as they, or any part thereof remain in the Kings hands, although there be acres in his hands whereon to be summoned. 38 E. 3. Br. Summons 17.

In a writ of right of Advowson the Sheriff may summon the Defendant in the Church. Br. Retorn. 101. 11 H. 6. *In Eglise*

Also in a Quare impedit, the Sheriff may summon the defendant in the Church, per Martin 11 H. 6. Br. Retorn. 101. *Et issint fuit adjudge fait* inter Lancelotum Episcopum Eliens. & *Lauther de cel Lieu.* Anno 16 Jacobi Regis

In Attaint, the tenant was returned Nihil, and it was testified that he had land in another Country, whereupon summons went out thither: Quod nota 21 E. 3. Br. Sum. 18. And note also that a man may be summoned in divers Counties. 21 E. 3. Br. Sum. 19. *In auter county.*

In a Præcipe against four, the Sheriff cannot summon the one, but that is a summons to all. 3 E. 4. Br. Sum. 10.

And yet in a Præcipe against two, th'one is returned summoned and th'other not, this is no good return. 5 H. 7. 27. Br. Retorn. 89. so that all the defendants must be summoned by the Sheriff.

Flo. 398. Also in a Præcipe there ought to be two Summoners, for if there be but one, and the tenant maketh default, and loseth by default, he shall have a writ of Deceit against the Sheriff, &c.

Vide Thel. 332. *Nota que si le tenant ne fuit summon secundum legem terræ, ne sera trye per Pais, mes le tenant poit gager son Ley de non summons ut supra, & uncore Corporation, Recluse, & Decrepit, ne poit gager Ley, mes lour summons sera trie per Pais.* 33 H. 6. fol. 8. Thel. 334. quære. Co. 9. 31, 32. & N. br. 177. & Finch. 86. *Ley gage.*

Note also that the Sheriff cannot summon himself, *Et pur ceo si le vic. suffera Recovery, ceo est erronious.* Dyer 188. & 266. Plo. 73. & Finch. 6.

The Book called The Mirror of Justices, giveth these Rules following (amongst others) concerning Summons.

Reasonable Summons, *est quant il est testifiable per deux loials franktenements, fait a le person, ou a le meason, ou al tenement contenus in le demand, ovesque garnishment del jour, Lieu, party, Judg, & de l'action, & de resonable respite al mains de 15. jours d'appear respons, &c.*

Auxi le tenant poiet prender ceux Exceptions al Summons &c.

- *Que il ne fuit pas summon.*
- *Que il fuit summon trope tarde.*
- *Que il ne resceive le summons per nul frank home.*
- *Que il ne fuit summon forsque per un Summoner* — *ceſt ore eſt error ſi le demandant proceed.*
- *Que il ne fuit summon al Freehold ou tenement in le demand.*
- *Que il ne fuit garny, sur quel chose il responder, ou vers quel actor, &c.* ibid. Libro 2. & 3.

Nul eſt ſummonable forſque un foits pur un cause.

Nul home ſerra arct d'eſtre Summoner, ſil ne voile de ſon gree.

Femes, ne Seriffs, ne Enfants, ne ul que ne eſt Freehold tenant, poient eſtre bon Summoners.

CAP. 32.

Attachment.

After the summons, if the Defendant or Tenant cometh not in, then there issueth out an attachment, which is a Proces authorising the Sheriff, to go to his house or land, and there to take surety by pledges, or to attach him by his goods, to the end that he shall appear and answer, &c.

Attachment. The word Attachment in our Law signifieth a taking hold, or apprehending by commandment of writ, and differeth from an arrest, or Capias, which is only of the body of a man, whereas an attachment at this day, is sometimes of or by the body, and sometimes of or by goods. Minsh. see Master Lam. f. 95.

In Real Actions, le Original Proces eſt ſummons.

In Mixt Actions, le Original Proces, eſt ſummons, & apres attachment.

In touts Actions de treſpaſs, le Original Proces eſt Attachment, & Diſtreſs infinite; Et ſur le attachment, ou Diſtreſs, retorne Nihil, trois Capias iſſeront, & puis Proces de utlary. Fitz. 92. a. & 100. d. Finch. 102. 106.

In auters perſonal actions, le Original Proces eſt ſummons, attachment, de corps, & Diſtreſs infinite. Finch. 106 hic c. 31.

The forme of the attachment at this day is thus, *Pone per vadios & salvos Pledg.* B. *quod ſit coram Juſtic' &c. ad reſpondend'* A. *de placito, &c.*

And note that the Defendant cannot be attached by his land; nor by any parcel of his Freehold (as by a Clod, &c.) nor by any chattel real (as a Lease for years, or a ward, or the like.) 7 H. 6. & 27 H. 6. Br. Attachment 1. & 4. & Finch. 94.

Neither

Neither may a table dormant, or any other thing which is fastned to the Freehold, be attached (as a furnace, wainscot, doors, windows, pales, or the like) 20 H. 7. 13. 21 H. 7. f. 26. And if the Sheriff shall attach a man by any such thing, he is punishable.

But an attachment ought to be made by such goods of the defendants own as are moveables, &c. by meer chattels personal, (which may be forfeit by utlary,) and which shall be forfeited by the default of the party, &c. if he appear not. Br. 1. 4. See Dyer 199. pl. 54.

And this attachment by goods is only where the Proces is *Pone per vadios, & salvos Plegios*.

Fitz. 93 H. 1. In debt, trespass, or the like, a man ought not to attach the defendant by his horse whereupon he rides, where he hath other goods whereby he may be attached; but if he hath no other goods, then the Officer may attach him by the horse he rideth upon. Br. 23.

Neither may a man be attached by his apparel. 7 H. 6. Br. 4. But this seemeth to be understood of his apparel which is upon his body; for if his apparel lieth by him, &c. it seemeth he may be attached thereby.

Neither shall any goods be attached, but the proper goods of the party, and not goods that are pawned, or borrowed, &c. 35 H. 6. Br. 20. tit. Attachment.

And therewith also agreeth the book of 13 H. 4. fol. 2. that if the Sheriff or his Officers shall attach my horse in the possession of my servant, for the debt of my servant, the Officer is a trespassor to me. Vide Fitz. Trespass 14. 55. Dr. & St. 138. & 149.

And therefore the Sheriff and his Officers are to be well advised by what goods they do attach a man, &c. whether they be the proper goods of the party attached, &c. for they at their peril ought to take knowledge to whom the property of the goods doth belong. See Fitz. Trespas. 14. & 243. & Doct. & St. 149. 150.

An attachment may be made by pledges as well as by goods, &c. by finding pledges or sureties to appear. Br. Attachment 1. 7. & 9. *Per Pledges*

Plegii dicuntur personæ qui se obligant ad hoc, ad quod qui eos mittit tenebatur. Minsh.

Et uncore semble que ceux Pledges ne serront lie en ascun forme (come mainpernors serront) mes si le party attach per pledges, (de vener & respondre, &c.) ne appear, mes fait default, ceux Pledges serront amercy al Roy, &c. Cromp. author. des Courts 169.

Ou le brief est, Pone per vadios, & salvos plegios &c. la si le vic. trove party, il poiet luy attach per Pledges; Et sil ne luy trove, il poet luy attach per ses biens Fitz. *Retorn. del vic.* 57.

Also yet if the Officer shall give warning to the Tenant in the presence of other honest men, to appear, &c. it is holden to be good

 enough,

enough, although he made no other attachment by goods, or pledges, &c. 34. Ass. Br. 9.

Note also that a Bayliff sworn and known, may not make an attachment without a Warrant; but a Warrant by word only is sufficient. Br. Attach. 15.

Also the servant of the Plaintiff may make the attachment, if so be he hath the Sheriffs Warrant to make the attachment. 26 H. 6.

Per parol. The Sheriff commanded his Bayliff to make an attachment, and the Bayliff commanded his servant to do it, who did it, and it was holden to be good, and all this was by *parol* without any warrant by writing. 27. Ass. p. 67. Br. Attach. 15. & 16.

But if a stranger without any commandment or warrant from the Sheriff, or his Officers, &c. shall make an attachment, this is void, and besides the stranger is thereby a trespassor, &c. And the Sheriff may in these cases be examined by the Court, whether he made any such Warrant, or no.

Note that goods attached, if that they be quick cattel, the Bayliff or other Officer may put them in the common pound; but if they be dead chattels (as pots, pans, or the like) there the Officer may take and carry them home to his own house.

Forfeitur. Where the Sheriff or his Officers, &c. shall attach another by a Cow (or by any other goods) if the party shall not appear (at the day of his return) his Cow, or other goods attached, are forfeited to the King, and the Sheriff shall be answerable for the value thereof; and therefore the Sheriff, &c. had need either to keep the goods attached, or else to take security to be saved harmless therein. 9 H. 7. 6. 34 H. 6 29. Dyer 199.

Nota que le property del biens attach. ne sont hors del party, tanque le jour del retorne, & que il fait default; mes si al jour del retorne le party fait default, donque le vic. ou son Officer poit prender tiels biens come forfeits, coment que il ad lessa tiels biens ove le party que fuit attach per eux: Et sic nota que sur attachment, le vic. ou auter Officer poit (a son election) prender les biens attach. ove luy; ou poit lesser & relinquier eux ove le owner, & apres prender eux sur default del apparance per le owner. 9 H. 7. 6. Br. Attach. 10.

Also it seemeth that the Sheriff, or his Officer, upon their attachment and leaving of the goods attached with the owner (as aforesaid) that they may take an obligation of the owner of those goods for the delivery of the same goods, if the owner shall make default of appearance; and that such obligation shall be good.

Nota auxy, que per essoine, l'attachment (ou les biens) attach est save, non obstant que il ne appear al jour d'essoine. Br. Attach. 3. & 11. *Mes* 34 H. 6. 29. contra. *Ou cesty que fuit retorne attach. in trespass,* per 20. Oves Precii, &c. *le defendant fuit essoine, &c. & al jour il fait default, il forfeiter l'attachment; mes per* Ashton *sil appiert al jour del attachment, ou al jour del essoine adjourne, il savera l'attachment, aliter non.*

Nul biens attach serront forfeit, mes in Courts de Record, & nemy sur Justicies in

in le County, per ascuns opinions, tamen alii e contra, sc. *que le chose attach devant le vic. in le County Court, ou sur Justicies, ou in ascun Court Baron, serra forfeit*, hic cap. 112. vide Br. Attach. 2. & 19. & Fort. 2. 4.

7 H. 6. Br. Attach. 4. A woman covert shall be attached by the goods of her husband, for the husband is to bring in his wife. Vide Fitz. Attach. 2. & 4. Fort. 17. & Retorn. 73.

And a Monk should have been attached by the goods of his Sovereign. 7 H. 6. Fitz. Attach. 2. contin. 17. *& Retorne del vic.* 73.

And yet some opinions have been to the contrary in these two last cases; for that if the wife or Monk, shall make default of appearing, they shall thereby forfeit the goods attached: and so they shall forfeit that which is none of theirs, which cannot be. 7 H. 6. Fitz. Attach. 2.

27. Ass. p. 67. The Defendant ought always to be attached fifteen days (at the least) before the day of the return of the writ. Br. Attach. 1. 5. 6. vide Co. L. 134. b.

And if the party be not summoned and attached, it is error. 19. Ass. 7. Br. Error 116. And the Officer shall be amerced. Liber. Intrac.

Auxi le tenant ou def. poet plede Nient attach per 15. *jours*. Fitz. 2. 14. 43.

Mes nient attach generalment n'est pas plee, pur ceo que il est contrariant al Retorne del vic. 2 R. 2. fol.

Nota trial de nient attach per 15. *jours serra tantum per examination del Officer que fait le retorn, & sil soit absent, l'attachment serra intend d'estre fait accordant al Ley* (sc. *per* 15. *jours*) *& le def. serra agard de respondre.* Vide Br. Attach. 6. 12. 17. & 18. Co. 9. 31.

Uncore in 26 H. 6. Br. Attachment 17. *In assise le tenant plede nient attach per* 15. *jours, & le plt. dit que son servant fist le Attachment, & il fuit demand, & esteant absent ne poet estre examin. per que novel Attachment fuit agard.*

Auxy nota que in Bank le Roy ils allow attachment in ass. de novel diss. de 8. *jours, & de meins.* Br. Attach. 13. vide il 5. & 8.

Quant le def. ad estre Attach in Real actions, & ne appear sur son attach-
Vide Fitz. 94. b *ment; Ou sil appear & apres fait default, donque issera le grand distress, per que le vic. est command a distrain. le def. per touts ses biens & chatels queux il ad deins mesme le County; & auxi de respond. al Roy les issues de ses ters & d'aver le def. in Court ad respond. & ad Audiendum judicium suum de pluribus defaltis vide le forme del brief.* Fitz. 94. & St. 52 H. 3. c. 9.

Nota quod pro transgressione facta contra Coronam Regiam, quæ tangit vitam & membrum, defendens sive delinquens Attachiatus erit per Corpus.

Et pro transgressione facta contra pacem Regiam (sicut de verberatione, de clauso fracto, de bonis asportatis, de arboribus succisis, & de similibus) defendens Attachiatus erit per Plegios, vel aliter.

Sed

Sed in casu de injusta detentione Catallorum, Replegiare, de Debito, & similibus, in horum aliquibus defendens Summonendus est, & in aliis Attachiendus, juxta eorum naturas.

Et le liver appel les mirror des Justices, lib. 2. *est a tiel purpose*, &c.

Les Attachments des offendors mortals serront per le Corps, sans Replevin.

Les Attachment des choses ou offences personals, sont auxy per le Corps, mes serra Replevin.

Note that in all Trespasses the Proces is an Attachment; so that if a Capias goeth out first, and the party taken thereby, he shall be dismissed. Finch. 355.

CAP. 33.

Capias ad Respondendum.

Capias. SI *nihil soit retorne sur le summons*, Capias *issera per le Common Ley.* Fitz. Wast. 45. *& ceo Proces est de prender & imprison. le party, &c.*

Auxi si nihil soit retorne sur le Attachment, ou Distres (in trespas ou auter personal actions) donques issera Capias, Alias, Pluries, & Exigent. Fitz. 92. a. *Termes del Ley tit. Proces.*

Mes in divers actions sont divers manners de Proces, que est plus alarge declare per Fitz. in son natura brevium.

Capias *est de deux sorts.*	*devant judgment*,	Capias ad respondendum.
	apres judgment ceo est quadrup.	Capias ad satisfaciendum.
		Capias pro fine.
		Capias utlagatum.
		Capias ad valentiam.

Nota que est un rule in Ley, que in touts actions Quare vi & armis, Capias (ad respond.) *gist, & ou* Capias *gist in Proces, la apres judgment* Capias ad satisf. *gist. & la le Roy avera* Capias pro fine. Co. 3. 12.

Sur le Capias ad respond. *si le vic. retorne*, Nihil habet in balliva sua, &c. *tunc isser'.*	Alias Capias.
	Pluries.
	Exigent.

Note that if the Pluries be not served, it is a contempt in the Sheriff, whereupon an Attachment lieth against him. 2 E. 4. fol. 1.

Si le def. ne soit prise, ne render luy mesme sur le alias ne Pluries, donque sur Non est inventus *retorne per le vic. la isser un* Exigent *(ou proces de utlary)* viz. *un* Exigi facias *direct al vic. de proclaim le party in* 5. *several Counties, sur le jur de son County, apres queux proclamation sil ne appear, le vic. retorne luy,* Quinto exactus, *&* non est inventus, *& ideo utla-*

utlagatus; *Sinon que il ad primes purchase un Supersedeas de surceaser, &c.*

Mes nota que Exigent ne issera devant 3. Capias agard', &c. 8 R. 2.

Devant le Statute de 25 E. 3. c. 17. *un* Capias *ne gisoit in det' ne le corps del def. ne fuit subject al arrest pur det sur specialty, ou contract, &c.* Vide hic antea Execution sur Capias.

C. 6. 53. *Le person (ou corps) del Baron, ou auter Peer del Realm, ne de Countesse ou Baronesse ne serra arrest in det, ou tresspass, mes in cases de contempt ils poient estre arrest.* Co. 6. 52. &c. *Et uncore si* Capias, *ou* Exigent *fuit agard vers tiels (sur det ou trespas) l'officer poit bien justifie de execute ceo.*

Capias ad satisfaciendum *est breve de execution apres judgment, de que* vide hic antea fol.

Capias pro fine *est lou un per judgment, est fine al Roy, &c. sil ne discharge tiel fine accordant a le judgment, son corps pur ceo est prise & commit al prison, tanque il ad pay son fine al Roy, ou done security pur le payment del ceo.*

Capias utlagatum *gist vers luy que est utlage sur ascun suit, & sur cel brief il serra prise, & mise in prison, sans baile ou mainprise, pur ceo que il ad fait contempt encounter le Ley.*

Nota que in Treason, & mort de home, la serra forsque un Capias, (soit in case de Murder, ou Homicide:) mes en auters Felonies (come in Burglary, Robbery, & Larceny) la serra deux Capias: —— Et in Mayhem la serra treis Capias, devant le Proces de utlary. Br. Proces 149. Fitz. Co. 234. Finch. 69.

Capias ad valentiam, *ceo auxi est apres judgment, & gist lou home est impled. de certain terre, & vouch a garranty un autre, & il ne scavoit pas barre le demandant, issint que le demandant recover, donque le voucher recovera tant in value vers le vouchee, & donque issera cel brief de quel Nat. bre.* 179.

There is also a Capias in Withernam de homine, &c. See hic Retorn de breve de homine replegiand.

There is also a Capias in Withernam de Averiis, &c. See hic breve de Withernam, & tit. County Court.

Note that where the Sheriff hath arrested one by force of a Capias ad Respondendum, if the plea shall happen to be discontinued, by the death of the King, or by any other way, there the Sheriff of his own authority may suffer his prisoner so arrested, to go at liberty. Keil. 2. hic c. 126.

CAP. 34.

Venire Facias.

Venire facias. This Writ of Venire Facias is of two ſorts:

The one is to cauſe the party, &c. the Defendant to come in, and anſwer, &c. and this but as a ſummons to warn the party to appear, &c. And upon this if the Defendant be retorned ſufficient, and maketh default, then a Diſtringas ſhall be awarded: But if a Nihil habet, &c. be retorned at the firſt, then after the Venire fac. there ſhall go out a Capias, alias, pluries, & Exigent.

The other is after appearance, when the parties be at an iſſue, then the Plaintiff or defendant ſhall have this writ, to cauſe the Sheriff, &c. to impannel and return a Jury, and this alſo is but as a ſummons to the Jurors.

If upon this Venire fac. the Sheriff ſhall return the names of the Jury, and if they do not appear at the day, then ſhall go out an Habeas Corpora Juratorum, and after that a Diſtringas Jurator. to diſtrain them until they come, &c. N. bre. 171. Plus hic c. 77.

There be divers other ſorts of this writ (of Venire fac.) as you may ſee in the Table of the Regiſter Judicial, verbo venire fac. all which the Sheriff is to execute, as the writs themſelves do direct.

CAP. 35.

Diſtringas.

Diſtringas. This writ is directed to the Sheriff, &c. commanding him to diſtrain the party for his, or the Jury for their appearance, &c. or to diſtrain for the Kings debt, &c. for this ſee hic antea cap. 11. Regiſt. 77. b.

Mes ou home eſt attach per ſon Corps, la nul Diſtr. iſſera apres.

A Diſtringas for the appearance of the party to anſwer, as alſo for the Jury, ſhall go out infinite, &c. until the party cometh in and appear. Fitz. 2. 59.

Ceo eſt dit diſtres infinite, quia ceo iſſer perpetualment tanque il appear. Fitz. 59. b.

And this Diſtringas is a Proces to diſtrain the parties, or Jury, by their goods, and the iſſues of their Lands, to come and appear; the

which

which they shall lose and forfeit to the King if they come not. Fitz. 59. b.

Britton, cap. 71. saith, that this distress for appearance, is of two sorts; Personal, by taking the moveable goods of the party, and detaining them for the security of his appearance to the suit.

Real is made of the moveable goods; as the Grand Cape, and Petite Cape.

The wife shall be distrained by the goods of her husband, and these shall be returned by the Sheriff in issues, and shall be forfeited if the wife come not. Fitz. Attach. 4.

Nota que ceo distress infinite semble d'estre al Common Ley, in lieu de que le Grand Distress est ore done in divers cases. Vide Stat. 52 H. 3. c. 7. & 9. & Westm. 2. c. 7. & 9. & hic antea c. 32.

And this grand distress is when the defendant hath been attached, and yet appeareth not: or when he appeareth and after maketh default, hic. cap. 32. I.

The great diversity also of this writ (of Distringas) as you may see in the Table of the Registers Judicial, verbo Distringas.

Plus hic Retorne de Distring c. 56.

If the Sheriff return too small issues upon any Distr. See hic c. 41.

Scire facias.

Termes del Ley. Scire facias *est brief judicial, direct al viconnt, &c. Et est de garner home de vener & monstre cause al Court, &c. quare execution dun judgment que est pas, ne serra fait: Mes cest brief ne serra grant devant que l'ann & jour sont passe apres le judgment done.* *Scire facias*

Upon this Writ of Scire facias it seems that the Sheriff hath no more to do but only to warn the party to appear, &c. according to the Writ, and then to return the same: See hic postea c. 63.

There be divers other sorts and manners of Process, as well in actions real as personal, which you may see at large in Fitz. natura brevium.

Nota que touts Proces serra fait in Nome le Roy tantum. 27 H. 8. c. 24.

Auxy nul brief ou Proces concernant le Commonly Ley serra agard south ascun del Petite Seals. 28 E. 1. c. 6.

CAP. 36.

Return of Writs.

REturns are nothing else but the Sheriffs answer touching that which they are commanded to do by the Kings Writ, and are but to ascertain the Court of the truth of the matter; and yet this seemeth to be the most difficult thing belonging to their Office; for the Sheriff must be very careful and circumspect that he make these returnes according to Law, both for substance, and forme; otherwise he shall not only endanger himself to be amerced, or sued for the same (as you may see hic postea c. 126. &c.) But also he shall indamage the parties, and may hazard the Cause or Suit it self: for you shall find that Judgments have been often stayed for defaults apparent in the Sheriffs return; yea and that Judgments have been also reversed, by Writs of Error, for such cause. See 5 E. 4. fol. 109. & 9 H. 6. Br. Ret. 43.

Note that in the execution of all Writs and Proces of Law, the Sheriff, and his Officers, must therein do all that which they shall be commanded to do by the Writ it self, and they must pursue the effect thereof in every behalf; and they may proceed no further, or otherwise in the execution thereof, then they are authorized by the Writ: and besides the Sheriff is to return the same Writ into the Court whence the Writ came.

But where the Writ or Proces is directed to the Bishop, there the Bishop is to make return thereof; and so where the Writ is directed to other persons (as to the Coroners, &c.) they are to make return thereof.

For the manner and form thereof of returns of Writs; first they must be made according to the ancient course, and according to the Presidents, and by the usual words, otherwise they are not good. See hic c. 56. 70, & 78. 2 H. 7. f. 8.

The form. And therefore in a Writ of Right, the Writ to the Sheriff is to return four Knights, to chuse the grand Assize returnable such a day, and the Sheriff returneth that they were no Knights but Burgesses, whereupon the Sheriff was amerced; and another Writ went out, &c. and thereupon the four Knights were demanded, who came to the Bar girt with their swords, &c. and so it seemeth by the opinion of Master Brook, that the Sheriff must return them Knights, although they be no Knights; for so be the Presidents, as you may see hic postea c 57. But if they have a sufficent Estate of lands within the County, it seemeth sufficient though they be no Knights: see the like case and reason given, Fitz. 164. a. *Knights.* 7 H. 4. Br. Rot. 106. Vide Plo. f. 117 & 225. a.

Waste was assigned in S. the return must not be quod accessit ad S. but quod accessit ad locum vastatum, 27 Hen. 8. Br. 2.

Vobis certifico. Upon a Scire facias the Sheriff returneth Ego R. O. Ar' vic' &c. vobis certifico 1 H. 6. 6.

[...]fico; it is not good, for it ought to be vobis Justic' infra script' [...]fico.

And yet in a Scire fac' upon a fine, the Sheriff returned Scire feci, &c. quod sit coram vobis ad diem & locum, &c. Exception was taken for that by this return he might be garnished to appear before the Justices of the Kings Bench, Common Pleas, or any other Justice, &c. but the return notwithstanding was allowed, Fitz Retorn 118. 26 E. 3. And so in the former case, vobis certifico may seem to be a good return, for that this word vobis (in both these cases) shall be referred to the Justices contained in the writ. See 3 H. 6. Fitz. Retorn. 3.

Venire fac. 12. &c. *le vicount retorne* Venire feci, & non executio istius brevis, *& auxi il retorne forsque 12 & pur ceux causis il fuit chase d'amender ceo.* 2 H. 7. Br. 84. Fitz. Retorn. 34.

So in a Habeas Corpora Jurator. the Sheriff must return them attached, and not quod habet corpora. And so in a Distringas per omnes terras, he must return Exitus, &c. 2 H. 7. f. 8. Br. 84.

And yet see Liber Intrac' fol. 388. b. wherein a Disting. the Sheriff returned quod J. & A. distr. sunt per catalla ad valenc' 11*s*.

Also in a Præcipe quod reddat, if the party yeeld the land, or in debt, if he pays the money, yet these are no good returns (and yet the writ is Præcipe quod reddat *le terre, ou le det*) but these returns must be made, according to the antient course. 2 H. 7. Fitz. 34. Vide plus Fitz. Retorn. 116. hic c. 73.

16 H. 7. The Sheriff returneth, quod virtute præcepti, &c. cepit corpus de J. S and exception was taken thereto, for that the return was not virtute brevis, &c. and yet it was holden to be a good return, for the Sheriff may take one in Westminster-Hall, by the commandment of the Justices without any writ. *Virtute præcepti, virtute brevis.*

In the return of garnishment by A. B. and C. D. these words probos & legales homines seem material (for else the Summoners may be persons attainted or outlawed, &c.) and yet if the Sheriff, returneth Scire feci per A. B & C. D. without the words probos & legales homines, it is sufficient, especially if the defendant appears, and it may be amended. 33 H. 6. 35. 8 H. 6. 27. & 44 E. 3. 36. Fitz. Retorn. 8. & 25. *Probos & legales homines.*

9 H. 6. 57. The Sheriff ought not to return quod defend' nihil habet, prout sibi aliquo modo constare poterit, vel non est inventus prout ei constare poterit, but he ought to return directly, quod nihil habet, vel non est inventus, otherwise he shall be amerced. Fitz. Retorn 9. *Prout constare poterit.*

The Sheriff upon a Distr. Jurat. returneth, quod breve adeo tarde sibi venit, (or deliberat. fuit) quod illud exequi non potuit propter brevitatem temporis, and it was holden a good return. Vide 21 H. 6. 51. Br. 52. Fitz. Retorn. 37. and yet by the book 2 H. 4. fol. 7. upon a Capias, Tarde is no good return. Plus hic c. 53. *Tarde.*

Et nota que le vic. poet en chescun brief Retorne Tarde, sinon en un attachment, & sin un Capias.

But

But if the Sheriff shall make such a return, where he hath sufficient time to serve the writ, he shall be amerced, &c. or rather he shall yield damages to the party grieved, according to the Statute of 13 E. 1. 39. Abr. d'Ass. fol. 137.

So if the Sheriff shall return mandavi ballivo libertatis, qui mihi sic respondit, quod breve adeo tarde venit, quod illud exequi non potuit, &c. There the Sheriff shall be amerced; for it shall be intended that the writ came to the Sheriff soon enough, and that he hath detained or kept it by so long time, where he might have made deliverance, &c. And indeed the mischief is great which may ensue upon this return; for by this means the Plaintiff shall never come to have his Process served, at least in time. 2 H. 4. fol. 7. for this last.

Non inveni, for, *Non est inventus.* The Sheriff returned non inveni partem, &c. for non est inventus; and the party being thereupon outlawed, assigned this for Error, and it was adjudged to be error, and not to be amended. 9 H. 6 fol. 12. Br. 43.

Mandavit for *Mandavi.* The Sheriff returneth quod mandavit ballivo de E. &c. for mandavi ballivo, &c. and was therefore amerced.

Superdictus for *infranominatus* *Et jeo aye view le report d' un case in Communi Banco, que Mercer esteant utlage al suite d' un Homer, move per avoider le utlary, pur ceo que le vic. retorne le Exigent sur le dorse del brief si, videlicet Superdictus Mercer, lou doit estre Infranominatus Mercer, car riens fuit supra escry mes infra; Sed touts les Justices tient que nient obstant ceo, le Retorne soit bon: Et per Curiam si le vic. ust escry le Retorne, in le inner side del brief & nemy sur le dorse del brief uncore ceo serra bon. Et per Windham si condition dun obligation escry sur le dorse soit in ceo form, sc. si prædictus* J. S. &c. *lou doit estre infranominatus, uncore ceo serra bon, car l'intent est tout un, & adonque les parols serra prise assets significant.*

Also upon a Distringas Jurator', the Sheriff ought to return the Names of the Manucaptors of the Jurors. Br. Retorne 86.

Nomina Manucapt' & Summonit', &c.

In a Scire facias to execute a Judgment or Fine, the Sheriff ought to return the names of the Summoners and Veiers. 3 H. 7. 8. Br. Ret. 86.

So upon the *Grand Cape*, the Sheriff ought to return the names of the Summoners and Veiers: Ibid.

Issues. Also upon the return of a Jury, the Sheriff is to return issues upon every person impannelled and returned by him, sc. upon the retorn of the Habeas Corpora Jurator. and upon the Distringas Juratores, but not upon the Venire facias, as it seemeth.

And yet in these former cases, if the parties, &c. shall appear and plead, (it seemeth) though the Sheriff, &c. shall omit to return the names of such Manucaptors, Summoners, Veiers, or shall return no issues, the return shall be amended, and shall be no error: But yet Mr. Brook holdeth it to be error if the return be not good, notwithstanding any appearance: Ideo quære, vide 8 Hen. 5. fol. 2. b. 3 H. 7. fol. 8. Br. Ret. 86.

Issint

Issint apres le tenant ad appeare in Court, il n'avera advantage d'ascun default in forme del Retorne; mes si ceo ne soit bon, poet estre amend. per Prist. 33 H. 6. fol. 31.

The Sheriff in a Replevin returneth that the Cattel are in a Fort, Castle, or Park, so that he could not make deliverance, &c. It is not good, but there he shall be amerced for such his return; for that he might have taken Posse comitatus, and so have made deliverance. 8 H. 4. Fitz. Retor. 48. *Que ne poet fair deliverance*

If the Sheriff shall return a resistance, it is not good, for he should have taken the power of the County, &c. But he shall be amerced for such his return; for that it tendeth to the dishonour of the King and his Crown, 13 E. 1. c. 39. See Fitz. Execution 147. & Retor. de vic. 88. *Resistance.*

The Sheriff returneth a Rescous, it seemeth not to be good: Vide Br. Retor. 66. 39 H. 6. The reason is, for that he might have taken Posse comitatus, as aforesaid. And yet see the Books 10 E. 4. fol. 17. & 3 Hen. 7. fol. 11. the Sheriff returned a Rescous; and in the one Book, for that the place where the Rescous was made, and in the other, for that the place where the Rescous was commanded to be made, were not certainly set down, therefore the returns were holden to be insufficient, and the Sheriff amerced therefore, whereas otherwise the Sheriffs return of the Rescous had been allowed: Ideo quære & vide hic retorne de capias. *Rescous.*

Dyer 69. pl. 33. Fitz. Retor. 32. Br. Retor. 88. Plus hic c. 54.

Also in the Book of Entries, tit. Rescous fol. 579. c. d. you shall find divers forms of Rescous returned by the Sheriff, Plus hic c. 54. And note, that where the Sheriff shall return a Rescous, he must shew in what place, day, and year, the same Rescous was made. Fitz. Attach. 1. Retorn. 32.

Also a Rescous returned against one without any Addicition, is good. Br. Exig. 49. & 13 H. 7. 21.

But Quære if the Sheriff by his former Return doth not charge himself, especially if that it may appear that he once had the body, &c. Vide Dyer 212. & 13 R. 2. Fitz. Retor. 74. *lou sur un Capias le vic. retorne Cepi Corpus, & illud deliberavi Constabul. Castri de* S. &c. *& un Abbe la viet vi & Armis, & luy reprist hors de son gard, &c. la fuit tenus per Curiam que le vic. ad charge luy m sme per cest Retorne.*

Upon a Capias the Sheriff returned, that the party committed Felony, and took sanctuary, which priviledge he could not break, this was a good return: See Br. Retor. 29. & 46. *Sanctuary.*

But if upon a Capias the Sheriff had taken the body, and then had come with his prisoner along by a Franchise, &c. and then the prisoner had claimed the Franchise: here it should have been reputed the folly of the Sheriff to bring his prisoner by such Franchise, and the Sheriff was chargeable with the body, notwithstanding such Return. 2 H. 4. Br. Esch. 38.

Arrest devant. Upon a Capias the Sheriff returneth, that before the coming of the Writ, the Defendant was taken and detained in prison, by force of a Warrant from a Justice of Peace in the Country, for the finding of Sureties for the Peace, &c. yet the Sheriff ought (as it seemeth) to bring in the party into the Court, and then after that the Plaintiff hath counted, and the Defendant hath put in his answer, he shall go under Mainprise, and be remitted to the Sheriff for to answer in the Country before the Justices of Peace, &c. 2 H. 7. fol. 2. Br. Respon. see 9 H. 6. 4.

Upon an Habeas Corpus directed to the Sheriff against any man condemned, or in prison, upon an Execution, &c. the Sheriff ought to return the truth and cause of his former imprisonment, and withall to bring in the prisoner into the Court, &c. See hic postea c. 54. & 63.

Upon a Corpus cum causa, or other writ, directed to the Sheriff, if he shall return that he hath commandment to surcease (*coment tiel commandment soit (outre) Privy Seal direct a luy per le Roy*) yet if he shall not execute the Writ, he shall be amerced. Vide hic cap. 63.

Inhibition. The Bishop being commanded to certifie Matrimony, &c. certifieth that he could do nothing, by reason of an Inhibition to him directed out of the Arches, and it was holden no return, for he ought to perform the Kings Commandment, notwithstanding the Inhibition: 36 Ed. 3. Br. Retor. 112.

Clerk. In a Scire facias against a Clerk (that is beneficed (upon a recovery in a Quare impedit) the Sheriff returned, quod Clericus est beneficiatus, &c. and therefore (by some opinions) the Sheriff was to be amerced, for here the Sheriff should have summoned him, &c. And yet it is a good return, quod est Clericus beneficiatus, non habens laicum feodum. Et quod non est inventus, for then he cannot be summoned if he be not found, nor hath Lay-fee. 32 H. 6. 11. Br. 124.

Note that the Sheriff is not to return quod Clericus est beneficiatus, &c. but only in Cases where a Capias or Distringas goeth out (which are a Cohertion) or an Attachment, as it seemeth. Finch. 354. Ibid.

Also in a Scire facias against a Clerk, the Sheriff is only to warn or summon the party, by his person, or by his Land, if he hath any Lay-fee. 32 H. 6. 11. Fitz. Retor. 23.

Where the Sheriff (upon a Scire facias) returneth quod Clericus est beneficiatus. Non habens laicum fœdum, there shall go a writ to the Bishop to sequester his Benefice. See hic c. 20. & 56. K. 47. 13 H. 4. fol. ult. 2 E. 4. 1.

Baron & feme. In an Assise against the Husband and Wife, the Sheriff returneth the Husband attached, and the Wife nihil, quære, if that be a good return, for by the better opinion of the Book 7 H. 6. the Sheriff should have attached her by the goods of her Husband: and yet by the Book, 48 Ed. 3. 25. & 49 E. 3. 1. Fitz. Ret. 73. it seemeth that the Wife shall not be attached by her husbands goods; but the Sheriff shall return pledges upon the one and the other: Ideo quære. Br. Attach. 4.

In

2 H. 6. 5. Br. 4. In a Scire facias against the husband and wife, the Sheriff returned that they are divorced, and was therefore amerced, for persons that are divorced may have garnishment, Quere & vide 1 H. 6. 2. Br. Ret' 63. Fitz. Ret' 1.

In a real action, if the Sheriff shall return the Tenant a woman Covert, or an Enfant, the retorn is not good. Dyer 104.

Utlary returned by the Sheriff upon an Enfant, is a good return, so as the Enfant be above the age of fourteen years. 2 H. 5. fol. For an Enfant is impleadable by the Law, and for his contumacy or contempt shall be punished, as a man of full age shall be. Dyer 104.

14 H. 4. 12. Br. 14. Upon a Fieri facias against Executors, the Sheriff returneth that they had sold the goods of the party dead before the writ purchased, and had taken money or other goods for the same, and the Sheriff was amerced for this return; for he should have taken other goods of the Executors to the value thereof, &c. Fitz. Ret. 55. Executors.

Also it had been no return that all the Executors but one had nothing; for the Sheriff ought to make execution of that which was in the hands of that one Executor. Fitz. Ret. 55.

9 H. 6. 57. The Sheriff upon a Fieri facias against Executors, returneth, quod nihil habent, post adventum brevis, prout sibi aliquo modo constare potuit, and for this he was amerced, for he ought to have returned directly, quod nihil habet: but the Sheriff may return, quod bona elongata sunt, and thereupon Execution shall be of their proper goods.

And yet if the Sheriff shall return, Quod bona Elongata sunt, an action of the Case will lie against the Sheriff for such his return, if it be not true.

Sur Fieri facias *vers executors, le vicount retorne*, nulla bona, &c. *le plaintiff poet aver special brief de* Fieri facias, sc. *que le vicount lever le det des biens le mort*, & si sibi constare potuit *que les executors ont degast les biens, donque* de bonis propriis. Co. 5. 32. 11 H. 4. fol. 70. Fitz. Exec. 57, 2 H. 4. fol. 4.

Also the omission of words usual maketh the return not to be good, as where the return was Residuum hujus brevis patet in quadam schedula, &c. for Residuum executionis istius brevis patet, this is vitious, 19 H. 6. Fitz. Ret. 14.

So in a Scire facias the Sheriff returned Scire feci *A.* quod sit coram vobis, &c. and did not say further, ad faciend' quod breve requirit, and it was adjudged to be no good return: 16 E. 3. & 26 E. 3. Fitz. Ret. 77. 119.

Issint assise fuit Retorne sic Plegii. E. *F.* infranominat' *A. B.* & *C. D.* *Ou le retorne serra.* E. *F.* infranominat' attachiat' est per Plegios *A. B.* & *C. D.* *Et pur default de ceo parol attach, le retorne tenus void:* 5 E. 4. Br. 93. Vide & quære.

Again

Again every return ought to answer the point of the writ (as it seemeth) and therefore where the writ (to the Sheriff) was, quod Scire facias, hæred' terrarum & tenementorum quæ fuere *M.* &c. and the Sheriff returned, quod Scire fecit *W. H.* militi, fil. & hæred. prædict' *M.* &c. And it was assigned for Error, for that he did not return him heir of some Lands or Tenements, according as the writ required; for his Warrant was not to summon the heir of M. but the heir of the Lands and Tenements of the said M. See Co. 3. 15.

Where the Writ directed to the Sheriff, hath in it this clause, vel causam nobis significes, it seemeth the Sheriff may return the special matter or cause &c.

Certain. Also the return of the Sheriff ought to be certain to every intent, as a Declaration ought to be, and the Sheriff is bound to take knowledge of the Law in making his return: and therefore in a Scire facias Laurentio Both Magistro Aule de B. in Cantabr' & scholaribus ejusdem, &c. the Sheriff returned quod Scire fecit Magistro, &c And did not say, Sciri feci Laurentio Both Magistro, neither spake of the Schollers, and therefore it was holden to be a void return. Fitz. Ret. 26. 32. And yet Vide Co. 8. 127, 128. that the Sheriffs return being only to ascertain the Court of the truth of the matter, it requireth not such precise certainty as is required in pleading. 3 H. 7. 11. a. 12. a. Br. Ret. 88. see Co. 8. 127, 128. Fitz. Retor. 32. 4 H. 6. 49. Br. Ret. 14.

Yet in a Scire facias against Elen. Prioress. de W. the Sheriff returned Sciri feci Prioress. de W. without saying Elen' Prioress. and it was holden good. 29 E. 3. 33.

If the Sheriffs return be incertain in the year, day, or place, it is not good. Dyer *69.* pl. *29.* & Fitz. Attach' 1.

And yet these, or the like words, in the return, sc. prout (or secundum quod or ad faciendum quod) illud breve exigit & requirit, do oftentimes help the incertainty. Vide Fitz. Ret. 2. 44. & 83.

The Sheriff upon a Capias returneth that he arrested the Defendant at D. and would have carried him to the Gaol, and that W. N. did rescue him, and it was holden no good return, for that he did not shew at what place W. N. made the rescue; and it shall not be intended to be where the Arrest was. Dyer *69.* Fitz. Ret. 32. 10 Ed. 4. 15. Br. Ret. 97.

Also Termino Pasch. *6* Eliz. Benlows Serjeant shewed to the Court, that upon a Capias ad satisfac. the Sheriff had returned a Rescous, and had not therein shewed the place where the Rescous was made, and thereupon the opinion of the Court was, that the return was not good; for that it was not certain from whence the Venue should come, if the matter were traversed.

Upon an extendi fac. the Sheriffs return was holden void by reason of the uncertainty, &c. See hic c. 58.

In

43 E. 3. 7. Br. 103. In a Præmunire the Statute is that the Defendants shall be warned by the space of two months before the day of the return, and for that the Sheriff returned the warning generally, and did not say what day, nor that it was two months before the return; therefore the return was holden to be insufficient; yet the contrary was holden: 39 Ed. 3. 7. Br. 56. And that it shall be intended that it is well served according to the Law; for other Writs ought to be served by the space of fifteen days before the return, and yet no mention thereof is made in the return: And if the Sheriff do not warn the party, nor serve the Writ as he ought, the party if he be damnified, may have a Writ of Deceit against the Sheriff.

8 H. 7. 6. Br. 116. And so in a Pluries for a Corodie, the Sheriff returneth that the Bishop of H is Founder, and returneth not the name of that Bishop which founded it, and therefore it was holden to be incertain, quia oportet nominare primum Espiscopum fundatorem, sc. Herbertum, &c.

Upon a Scire fac. against one upon a Statute, the Sheriff returneth mortuus est, whereupon a Writ went out to warn one J. and his heir, and R. and W. the *terre tenants*; And the Sheriff thereupon returned *Scire feci hæred. & terræ tenentes*, without naming the heir, or *terre tenants*, by their proper names, and for this the Sheriff was amerced, and another Writ awarded. Fitz. Retor. 69.

9 E. 4. 19. Br. 54. If a writ be returned thus, responsio vicecomitis *C.* and sheweth not the Sheriffs name, it is no good return by the opinion of Jenny, 3 E. 4. Vide hic cap. 41.

Ibid. If the Sheriff returneth Mandavi Ballivo libertat' *R.* and sheweth not whose liberty it is, or who is Lord of the Franchise, this is no good return by Pigot, but Danby held the contrary. 9 Edw. 4. 19. See 1 Hen. 6. fol. 6. Br. 64. Fitz. Retor. 2. & 4.

The Sheriff returned Mandavi ballivo libertatis Ducis Lancastr. &c. and for that the Duke had divers Liberties within the same County, therefore the return was holden not to be good. See 1 H. 6. 6. Fitz. Retor. 2.

If the Sheriff returneth Mandavi ballivo liberat' de *D.* and saith not ballivo *J. N* libertatis suæ de *S.* this was good by the opinions of three Justices, but Hales Justice held the contrary. 1 H. 6. fol. 6.

And according to this opinion of Hales, it was adjudged termino Mich. Anno 18 Jacobi Regis, that the Sheriff in his return is to set down the name of the Bayliff of the Liberty. See hic postea cap.

1 H. 6. 6. Br. 64. Fitz. Ret. 2. In a Scire facias, the Sheriff returneth Scire feci, *E. K.* modo & forma prout illud breve in se exigit & requirit, and saith not infranominat' *E. K.* and yet this was holden (by the Court) to be good: for note that these words, prout breve exigit, &c. doth amount to infranominatus, or infra scriptus; see the Books 2 H. 4. 13. & 3 H. 4 9. Br. 28. Fitz. 44. the like return upon a Scire feci, against two or three several Tenants, the Sheriff returned Scire feci, &c. modo & forma prout breve exigit, &c. and it was holden to be good, without saying or returning separatim sciri feci, &c.

If the Sheriff return upon a Capias against *J.* & *N.* quod cepit corpus *J.* & *N.* and saith not infranominat *J.* & *N.* this is misprision and must be amended, and yet by the Reporter it is well enough without amendment. 12 H. 7. 19. Br. Amendment 64.

In an assize the Sheriff returned the Writ thus *J. P.* & *A. P.* attachiati sunt; viz. *J. P.* per unum bovem pretii, 10 s. & *A. P.* per unum equum pretii 40 s. and said not intranominati, this was holden to be erroneous; for it might be intended that they were two strangers. 11 H. 7. 28.

The Sheriff attacheth one by his goods; he ought to return the certainty of the goods in specie, &c. hic c. 52.

Also the Sheriff shall return no Juror without some true and certain addition, by which he may be known. Hic c. 85.

But the Sheriff may return Mainpernors without any additions. 10 E. 4. 16. Br. Exig. 49.

So the Sheriff may return a Rescous against a man without any addition. Ibid.

An Utlary was returned in this manner, Ad com. tentum apud J. in com. Sommerset *J. M.* exactus fuit & non comparuit, &c. and it was holden (by three Justices) a good return, although it were not Ad com. Somerset, tentum apud *J.* in com. Somerset; but Jay Justice held the contrary; for that it could not be intended of what County the County which was holden was; but alii e contra 11 H. 7. 10. Br. 127. Ideo quære.

Note that in the former Case, this word Somerset, was not entred in the Margent, or upon the head of the return, which is and hath been the ancient usage, and seemeth also to be very material: See 11 Hen. 7. 10. a. b.

Also see Co. 10. 141. a return of an Exigent holden void for the incertainty, & hic c. 59.

An Utlary returned in London, in these words, Ad Husting. tentum in Guildhall Civitatis Londini, tali die *A. B.* exactus fuit & non comparuit: this is no good return, for that there are two Hustings in London; one is de communibus placitis, the other is de placitis terræ, and therefore in such case the return must be Apud Hustingum de communibus placitis, &c. Or otherwise it is not good, for that the same may have two intendments.

The City of Norwich is within the County of Norfolk; also it is a County in it self, which may hold Plea; and therefore if a return be made in these words, Ad com. tentum apud Norwicum in com. Norf. this is not good, for that it may have two intendments: sc. that the County which was held there was for the City, or the County of Norfolk: But if the return be in these words, Ad comitatum Norf. tentum apud Norwicum in comitatu Norf. this is good; for now it cannot be intended, but only that this County was held for the County of Norfolk. 11 H. 7. 10. b. *2. Intendments.*

In

Co. 4. 94. Dyer 165. In writ of Error to reverse an Utlary in the County of Lancaster, the Error was for that the Sheriff returned, quod ad com. Lancastriæ, tent. ibid. &c. where it should have been ad com. Lancastriæ, tent. apud Lancaster, or at some other certain place whereto that word Ibidem might have had relation, and the utlary was therefore reversed.

21 H. One was outlawed, and the Exigent was returned thus, Ad comtentum apud castrum de Oxon primo exactus fuit, &c. and for that it was not set down in what County, it was holden to be erronious.

Ibidem. One was returned outlawed, and for that it did not appear that it was per Judicium coronatorum, it was reversed, and that without any writ of Error: 21 H. 7. fol.

27 H. 8. 29. Br. 3. An Exigent went out to the Sheriffs of London against J. S. of D. in the County of Essex Gent. and Proclamation to the Sheriffs of Essex, who returned the Writ in this manner, Virtute istius brevis proclamari feci ad com. talem, tentum tali die, and did not set down in what year, &c. Et quod se redderet vic' Kanciæ, where it should have been vic' London: and for these causes it was holden no good return, and the Sheriff should have been amerced, but that the writ was returned in another term.

40 E. 3. Br. 17. In a writ to enquire of wast, the Sheriff returned quod cepit Inquisitionem die Sabbati proxim' apud K. and for that he shewed not what Saturday, and also shewed not quod ivit ad locum vastatum prout breve exigit, it was holden no good return, and the Sheriff was amerced.

34 Ass. 6 Br. 76 In an attaint the writ was, & diligenter inquir. qui fuer. Juratores primæ Inquisitionis, and whether M. B. Miles were one of the Petty Jury the Sheriff returned their names, and that M. B. was dead, and did not say M. B. Miles, so as it might be intended to be another person, and yet it was holden a good return.

In a Scire facias to have an execution of an annuity against a Par-
8 E. 4. 1. son, the Sheriff returned, quod non habet bona, and notwithstanding that it was not further, Nec habuit die receptionis brevis, yet it seemeth to be intendable, and so to be good. So in debt or trespass. See hic Retorn in det. *Bon per intendment.*

In a Scire fac. the Sheriff returns, quod Scire fecit *J. N.* prout breve in se exigit & requirit, it is good although he says not intranominato for it shall be intended: 1 H. 6. 6. Br. expos. 34.

So if the Sheriff returns, Mandavi ballivo de D. and doth not further say, ubi terra jacet, it is good, for it shall be so intended, ibid.

So in a Scire fac. sued against two several tenants, the Sheriff returns Scire feci a les. 2. quod sit, &c. modo & forma secundum quod istud breve exigit & requirit, &c. And although the return was not Scire feci a les. 2. separatim; yet for that the return was, modo & forma, &c. the return was holden good: 2 H. 4. 13. Fitz. Ret. 44.

So if the Sheriff in the former case had returned Scire feci a les. 2. quod sint, &c. ad faciend' quod istud breve exigit & requirit, it is good. Ibid.

In waste, or Redisseisin, in divers Towns, the Sheriff ought to go to all the Towns (though he may take his inquisition at one) and he returned quod accessit ad *D.* & ibid. cepit inquisitionem, and holden good, for that by intendment he likewise might go to all the other Towns, &c. 40. Ass. 23. Br. Rediss. 5.

See more the Sheriffs return holden to be good by intendment: 28. Ass. pl. 40. & 34. Ass. pl. 6.

Also sometimes the return of the Sheriff is only to certifie and ascertain the Court the truth of the matter, and in such case there needs no such precise certainty as in pleadings: see the Case of the City of London, Co. 8. Co. 8. 107. 108.

If the return be repugnant, it is not good. Dyer 278. vide hic Ret. de Seisina in Dower.

Double. A double return made by the Sheriff is not good, as if the Sheriff returneth (the Pluries against an Abbot to admit the Kings Varlet to a Corrodie) that the King is not Founder, and that King Edward the 4. did release to the Abby all Corrodies, this is double and so void. 3 H. 7. f. 6. Br. Ret. 116.

Also the Sheriff is not to return any thing which should come in by the challenge of the parties: as in a Writ of Right the Sheriff returneth two Knights, and two Serjeants, to chose the Grand Assise) this is a good return; but if the Sheriff returneth this as a cause thereof, sc. for that there were no more Knights within the County, which were not of kindred to the parties, this makes the return to be insufficient, Causa qua supra. And yet Surplusage in a return, doth not make void the return (as it seemeth) for as to the Surplusage the Court taketh no regard. 32 H. 6. Fitz. Retorn. 23.

In all (or most) cases, the Sheriff may make these returns following:

Tarde, &c. hic 64. b.
Non est inventus.
Nihil.
Mandavi ballivo Libertatis hic.
Clericus est beneficiatus.
Servic.

True. The Sheriff by his Office and Oath, is to make a true and just return of all Writs: see his Oath & Dyer 60. b.

And by the Statutes, if the Sheriff shall make any false return, he shall be punished, i. he shall amerced, and besides shall yield damages to the party grieved: Stat. 13 E. 1. 39. & 28 E. 1. 16. 12 E. 1. c. 39. 28 E. 1. c. 16.

Where the Father was condemned, and upon the Exigent upon a Capias ad satisfaciend. the Sheriff returned quod reddidit se, and it was the Son which came (and so averred and found to be the Son) the Sheriff was amerced. 7 H. 4. 13.

Upon an Exigent the Sheriff returneth quarto exactus, and the Coroners upon a Cerciorari to them directed, certified that the defendant 37 H. 6. 21. Br. 59.

dant was outlawed, the Sheriff for such false return was amerced at forty pounds.

5 Eliz. c. 23. If any Sheriff or other having authority to return Writs, do make an untrue return upon any Capias, in a writ of Excommunicato capiendo to him directed, that the party named in the Writ hath not yielded his body upon any Proclamation made, where indeed he hath yielded himself according to the effect thereof, he shall forfeit to the party grieved forty pounds to be recovered by action, &c.

Fitz. 53. b. If the Sheriff in a writ of account, or debt, shall return upon one, quod non est inventus, nec habet terras, &c. per quod distringi potest, &c. whereupon a Capias shall be awarded against him, and he shall be taken thereupon, whereas he had lands sufficient, or goods and chattels, then the party may have his action of the case against the Sheriff (directed to the Coroners) for such false return.

Fitz. 97. c. In a Præcipe quod reddat, if the Sheriff return the Tenant summoned, when he was not summoned, whereby the Tenant loseth by default upon the *Grand Cape* returned: here the tenant shall have a writ of deceit against him which recovereth, and also against the Sheriff for his false return.

48 Ed. 3. 15. 48. Ass. 2. And yet in some cases the Sheriff shall not be amerced or punished for making a false return, as in an attaint; if the Sheriff shall return any to be of a petty Jury, which were not, Process shall go out against those whose names were omitted, but the Sheriff shall not be therefore amerced: see hic.

Note that the Sheriff cannot return any thing which is contrary to the confession of the party: As for a trespass laid in D. and the defendant confesseth that there is such a Town, here the Sheriff cannot return Nul tiel ville in Com. &c. 3 H. 7. Br. Retorn. 87 & 37 H. 6. Fitz. Retorn. 27.

3 H. 7. 12. Br. 87. 5 H. 7. 17. Also note that the Sheriff cannot return any thing which is contrary to the verdict of the Jury, as in an action of debt against Executors, who plead that they have fully administred, and it was found against them, &c. that they had assets remaining, whereupon a Fieri facias was awarded to the Sheriff to levy the sum of the goods of the Testator, and the Sheriff returned Mandavi ballivo libertatis de *K*. qui mihi dedit responsum, quod executores prædicti testatoris non habent aliqua bona testatoris, &c. the which return was contrary to the verdict, &c. and therefore not good. Fitz. Ret. 35.

And yet for that he is a stranger thereto; and it may be that the defendant hath not assets within his County, and yet hath assets in another County, and then the Jury upon the former issue ought to find assets, and yet the Sheriff cannot return so, except they be within his County, whereupon the case was adjourned.

I have seen a report of a case in Communi Banco, 21 Eliz. where in an action of debt against Executors, who pleaded riens inter mains, the defendant did aver that they had assets, which also was found by verdict, and upon a Fieri facias to have execution, the Sheriff returned riens inter mains; and the former books of 3 H. 7. & 5 H. 7. were vouched to

prove

prove that the return was not good, being against the verdict of the Jury (and therefore it was moved that the Sheriff should be amerced.) But Roads Justice doubted thereof, and avouched the book. 7 E. 6. to the contrary, sc. that the Sheriff should not be concluded by the verdict.

Contra al bre. In a Replevin it is no good return that there are no such goods or cattel: 5 H. 7. 27.

In a Writ to deliver goods upon a Detinue, it is no good return, that there are no such goods, ibid.

In an Habere facias seisinam, it is no good return that there is no such land, ibid.

Also in Writs of Seisin, it is no good return to alledge Non tenancy in him whom the writ of Record supposeth to be tenant, Manxels Case. Plo. 14. a. & Fitz. Retorn. 91.

The Sheriff cannot return Nihil, where issues were returned by himself before.

Contra. al former retorne. The Sheriff cannot return nihil upon him whom he hath once returned, summoned, or distrained upon another writ; tamen quære, for such return may be good upon some special matter returned. Vide 9 H. 6. Fitz. Ret. 10. 13. & Br. Ret. 7. 22 Ass. 80. Br. 51. 10.

By the opinions of Fortescue and Markham, if the defendant be returned sufficient, and after Nichil, it is good, for that the Plaintiff may have a Capias, and an Exigent against him; but otherwise against a Juror: Br. 49. 19 H. 6. 31.

And yet in some cases, the new Sheriff is not concluded by the return of the old Sheriff, but may retorn the contrary, &c. See hic cap. 44.

False Latin. But false Latin is not greatly material in the return of a writ, &c. as if the Sheriff shall return in a pannel, Johannis D. where it should be Johannes D. yet it is a good return. 2 H. 4. 7. Fitz. Ret. 43.

The Sheriff returned Scire feci *J. A.* Cl'io, whereas it should be Clerico, and it was amended: 7 H. 6. 1. Fitz. Ret. 6. 7 H. 6. 1.

CAP. 37.

Cepi corpus. If the Sheriff return upon any person Cepi corpus, or Reddidit se, the Sheriff shall be chargeable to have the bodies of the said persons at the days of the return of the Writs, Bills, or Warrants, &c. 23 H. 6. c. 10. And so was the ancient Common Law. Fitz. Ret. 71.

The Sheriff returneth Cepi corpus, but hath not the body at the day, he shall be amerced: 44 E. 3. 2. yea although a protection were cast for the defendant: 11 H. 4. 57. Liber. Intrac. tit. Capias 19. Fitz. Retorn. 71. & Co. 8. 40. 44 E. 3. f. 2. 11 H. 4. f. 57.

So if the Sheriff returneth quod mandavi ballivo, &c. qui respondit quod cepit corpus; and if the prisoner appeareth not at the day the Sheriff shall be amerced, by some opinions; but by other opinions, the Bayliff only shall be amerced: see hic postea.

The Sheriff returneth Reddidit se upon the Exigent, but hath not the body, he shall be amerced.

Upon a Capias ad satisfac. if the Sheriff returneth a Cepi corpus, and hath not the body, he shall not only be amerced, but also the plaintiff may have his action against the Sheriff for an escape, for that his return hath concluded him: Br. Ret. 107.

Upon a Capias for Felony, the Sheriff returneth Cepi corpus, but hath not the body at the day, whereupon the Sheriff was amerced for the escape at fifty pound.

Upon Process against the husband and wife, the Sheriff returneth, quod cepit illos, and at the day the husband appeared, but not the wife, and the Sheriff was amerced therefore.

But if the Sheriff had returned that the husband Non est inventus, and that he had taken the wife, and she only had appeared, that had excused him.

Upon a Fieri fac. the Sheriff returneth Fieri feci, &c. Quas paratas habeo ad diem intra content. and at the day he hath not the money in Court, and after a new Sheriff was made, and it was moved to have a *Distring.* nuper vicecom. ad habendum denarios, &c. But Littleton said, That the Justices were advised upon this return, being of record, to award a Scire fac. against the old Sheriff to have execution, and if he could not discharge himself, then the party should have execution against the old Sheriff by Fieri fac. or Elegit. 9 E. 4. Br. Ret. 55.

Upon a Fieri fac. if the Sheriff levieth the money, but yet returneth not the Writ, nor payeth the money to the plaintiff, it seemeth the plaintiff may have his action of Account against the Sheriff: as also the defendant may have his action of trespass against the Sheriff for levying the money, and not returning the Writ, vide 11 H. 4. & 27 H. 7. 22. b. Br. Tresp. 211.

Now where the Sheriff shall be amerced for his return.

Mr. Bracton, lib. 5. tit. de exceptionibus c. 32 saith thus. Aliquando vicecomes negligens est in executione præceptorum Domini Regis, per fraudem. Aliquando illa exigi non potest propter impotentiam unde nisi rationabilem pretendit excusationem, in misericordia Domini Regis remanebit. Contingit vicecomiti quandocunque quod cum breve Domini Regis susceperit de Attachiando aliquem, post sum monitionem factam, quod Attachiamentum non facit, nec breve quod ei inde venit remittit, Quo casu, &c. *un alias issera commandment al vic. de Attacher le def. quod sit ad talem diem*, Et quod ipse vic. tunc sit ibi auditurus Judicium suum de hoc quod præd. def. non Attachiavit, nec breve quod ei inde venit, misit, sicut ei præceptum fuit, &c. Ad quem diem si vicecomes nihil inde fecerit magis quamprius fecit, nec se excusaverit, ad voluntatem Domini Regis amerciabitur de contemptu, & tertio per breve, Domini Regis, &c. præcipietur quod ei Attachiet, &c.

Mittit quandoque vicecomes breve quod inde susceperit, & fraudulenter rescribit & mandat, quod breve tam Tarde recepit quod præceptum Domini Regis exequi non potuit. Quo casu si in contrarium testatum fuerit, &c. Alias issera, ut super, &c. ibid.

Et issint est de auters faux Retornes del vic. &c. un alias issera ut super, & amerciabitur ut super. ibid.

Issint si vicecomes per imperitiam suam erraverit in modo & ordine Attachi-

Attachiamentorum & Districtionum; ut si præceptum sit ei, quod ponat per vadios & salvos Plegios, & ille mandat, quod, Distrixit per terras & catalla vel è contrario.

Issint si Præceptum sit ei, quod Habeat Corpus, & ipse mandavit quod Attachiavit per Plegios, vel commisit per ballivum, vel hujusmodi, ibid.

Vic' amerce. Note also that the Sheriff shall be amerced, yea shall yield damages to the party grieved for his return in divers other cases, see hic cap. 20.

As if his return be incertain or otherwise insufficient: Br. Ret. 3. vide hic c. & 7 E. 6. c. 1.

So if his return be false: Stat. 28 E. 1. c. 16. & hic antea.

So if he make no return: hic postea.

So in a Replevin if he return that the cattel be in a Fort or Castle.

So if he return he could not execute the writ for resistance, &c.

The Sheriff shall be amerced for returning small or no issues, upon the defendant. Stat. 13 E. 1. c. 39. & Bro. Ret. 120. & 86.

The Sheriff shall be amerced for not returning issues upon Jurors, according to the Statutes.

The Sheriff shall be amerced for not returning pledges. Br. Ret. 25. 61. 86.

See Mr. Bracton, lib. 5. tit. de exceptionibus, c. 32. that the Sheriff shall be amerced for making a false or insufficient return, or other negligence therein.

But note that the use is to amerce the Sheriff the same terme only wherein he maketh his return; and if he be not amerced that term, then he is to go quit, quod nota per Fitz. 27 H. 8. fol. 29. a. but this amercement is no recompence to the party grieved: and therefore the ancient Statutes of 13 Ed. 1. c. 39. 28 E. 1. c. 10. & 2 Ed. 3. c. 5. (hic antea c. 20.) were meet to be put in use and execution.

Pur default de auter. Upon a Writ to enquire of damages, the Sheriff returneth that the Enquest or Jury gave or found no damages; the Sheriff shall not be amerced for this default of the Jury: for the Sheriff shall not be amerced, but where he returneth the writ falsely or insufficiently of himself, whereas here he returned it as the Jury had presented it. Fitz. Ret. 66. 44 E. 3. 3. Br. 20.

Del Southvic'. And yet the Sheriff shall be amerced for the default of his Under-Sheriff; as in the book of Assises, where the Under-Sheriff returned a pannel by a precept directed to one who was not Bayliff of a Franchise, by reason whereof the pannel was quasht; there the Sheriff himself was amerced, and not the Under-Sheriff; and an action of the case doth lie against the Sheriff himself, for the return is always in the name of the Sheriff himself: see hic postea tit. Sheriffs Officers. 38. Ass. p. 13. Br. 77.

Del Bayliffs. So the Sheriff shall be amerced for the default of his Bayliff.

If any Bayliff or other Officer shall impannel or return any person, upon any inquiry in the Sheriffs Turn, which is not of good name, and have 20 s. per annum of Freehold, or 26 s. 8 d. per annum of Copyhold, &c. such Officers shall lose for every person otherwise returned or impannelled forty shillings, and the Sheriff other forty shillings, &c. 1 R. 3. c. 4. hic postea Sheriffs Torne.

Del Bayliff de Liberty. Also sometimes the Sheriff hath been amerced for the default of the Bayliff of the Liberty; and therefore where two were indited of Felony, and pleaded Not Guilty, the Sheriff returned certain persons, and by examination of the Justices it appeared that they had not sufficient Freehold, according to the Statute, and the Sheriff was amerced at five pounds, 38. Ass. 19. Br. Chal. 129.

pounds, the Sheriff said that the Bayliff of the Franchise of Bury made the Return; whereunto Green Justice answered, That the King had no Minister but the Sheriff.

But note that in this Case the King was party, and where the King is a party, no Franchise shall be allowed, but the Sheriff himself ought to have served and executed.

Br. 14. 89. The Sheriff returned upon a Capias, Mandavi Ballivo, &c. qui respondit quod cepit Corpus; and the prisoner appeared not at the day, the Sheriff was amerced; for where the Bayliff made a false return to the Sheriff, and the Sheriff returned it (as quod cepit Corpus, and had it not at the day) yet the Bayliff shall not be amerced, for that he is not the immediate Officer to the Court, but the Sheriff is the immediate Officer.

And yet there were sundry authorities to the contrary, sc. that in the former Case the Bayliff of the Franchise was to be amerced, and not the Sheriff; and that the default was only in the Bayliff, and not in the Sheriff: for upon such return of the Bayliff (to the Sheriff) quod

Br. Retorn. 35. 87. 92. 94. 96. 99. cepit Corpus, &c. The Bayliff was bound to bring in the body into the Court at the day, or else to deliver the body to the Sheriff, and then the Sheriff was to bring in the body as the immediate Officer to the Court. Vide liber Intrac. tit. Capias div. 20. & Fitz. pr. 22.

Br. 89. But where the Bayliff of the Liberty made an insufficient return to the Sheriff, and the Sheriff returned, he was amerced, and not the Bayliff; for that the Bayliff was not Minister to the Court, 20 E. 3. Fitz. Retorn. 113.

And therefore when the Bayliff made an insufficient return, the Sheriff should have done well, and might have returned, quod nullum dedit responsum; for an insufficient answer or return, is as none. Fitz. Amerc. 1.

As in a Præcipe against two, the Bayliff returneth one of them summoned, and the other not; this is no answer; and if the Sheriff return this, he shall be amerced, Br. 89.

2 H. 6. 9. Br. 47. So in an Assise the Sheriff returned, Mandavi ballivo, &c. qui mihi respondit, &c. and returned but nine Jurors, and the Sheriff was amerced; for that he ought to have returned, quod mandavi, &c. qui nullum mihi dedit responsum.

3 H. 7. 12. Br. 87. So the Sheriff returned, Mandavi ballivo, &c. qui mihi respondit, that the Executors had no goods of the Testator, which return of the Bailiff was contrary to the Verdict of the Jury (who had found assets, &c.) and therefore the Sheriff was amerced, for that the return of the Bayliff appeared insufficient in Law, whereof the Sheriff ought to have taken notice, and in such case to have returned, quod ballivus non dedit responsum.

And yet in a Writ to enquire of Waste, the Sheriff returned, Mandavi ballivo Libertatis, qui mihi nullum dedit responsum, and the Sheriff was therefore amerced; for that the Sheriff (by this Writ) is made a Judge of the Cause, and might have entred the Franchise, &c. 11 H. 4. Fitz. Retor. 53.

But if the Bayliff maketh a doubtful return, and the Sheriff returneth this, it seemeth he shall not be amerced, by the opinion of Vavisor. 5 H. 7. 27. Br. 89.

27 H. 8. 24. 1 E. 3. cap. 5. But now by the Statute made 27 H. 8. cap. 24. amerciament for insufficient returns of Writs, made by Bayliffs of Liberties, shall be set upon the heads of such Bayliffs, and not upon the Sheriff, nor upon the Lord of the Franchise, Dr. & St. 134.

CAP. 38.

Where the Sheriff maketh no Return.

Nota le commencement del Suit, est touts foits per brief Original hors del Chancery south le Grand Seal D'Angliter, Teste Rege; Et retornable in le Court qui tiender plea (sont Bank le Roy, Common Bank ou Chancery mesme:) Mes tanque Retorne le suit n'est dist pendant; Ne les Courts ne teignant plea sinon sur Original retorne devant eux; Et pur ceo sur Original retorne Tarde (sc. adeo tarde venit quod executiones inde facere non potui) *Alias, & Pluries, isser. hors del Court, lou l'original est retorne, Teste le Chief Justice, car per le Retorne le Court est possess. Mes si nul Retorne soit fait, le Alias, & Pluries isser. hors del Chancery.* Finch. 52. 53.

Et le tierce brief nient retorne per vicount, est un Contempt sur que Attachment gist vers le vic. 2 E. 4. 1.

By the Statute of Westminster 2. cap. 39. Damages are given against the Sheriff, if he makes no return at all, or shall make a false return, &c. vide hic c. 20.

Fait nul retorne If the Sheriff will not return his Writ (in case of Redisseisin, or Utlary) the party may have a Certiorari, directed to the Sheriff, to command and cause him to return the Writ, and the Sheriff shall be amerced for such his fauxity and concealment. Dyer 223.

If a Capias, or other mean Process be executed, and not returned, the Arrest is tortious and a wrong; for the Arrest is made to that end that the Defendant should appear to answer to the Plaintiff in his action: But if an arrest be made by the Bayliff, and the Sheriff will not return the Writ, this laches of the Master shall not prejudice the servant; for the Bailiff cannot compel the Sheriff to return the Writ: but contrariwise of the Master himself, sc. if the Sheriff taketh one upon a Capias, and returneth not the Writ, an action of Faux imprisonment lieth against him, by him that was arrested, and the Plaintiff also shall have his remedy against the Sheriff, Littleton 18 E. 4. 9. Br. Trespa. 339. Br. False imprisonment 5. 7. & 12. ac'. And yet in the book of 13 H. 7. fol. 1. 2. this difference is taken, sc. that if the Bayliff of a Liberty by vertue of a Warrant from the Sheriff arrests a man, and after the Sheriff returneth Non est inventus, the Bayliff shall be discharged in an action of false imprisonment, for that he is not the Sheriffs Bayliff, but the Kings or some other Lords; but otherwise it is of the Sheriffs Bayliff, if he arrests a man by vertue of a Warrant from the Sheriff, and after the Sheriff returneth Non est inventus, this Bayliff is chargeable in an action of false imprisonment; for it shall be accounted his folly to do a thing by his Masters warrant or commandment, and then his Master will not return the Writ according to that which he hath done. See 21 H. 7. fol. 22. accord. that the Sheriffs Bayliff or servant is not bound to do any thing but that which his Master will justifie.

Co. 5. 90. Cro. 86. 89. Eliz. Scire fac. 30. 3 H. 7. 36. 21 H. 7. 22. a. Vide Cro. 86. 87, 89.

It hath been holden, that (upon a Fieri facias) the payment of the money by the Sheriff to the party Plaintiff, was to no purpose; for

the Defendant is a Debtor of Record, and therefore ought to be discharged upon Record: And for that purpose the Fieri fac. is, Ita quod habeas denarios hic, to the intent that the money should be paid to the Plaintiff in Court upon Record, and the Defendant discharged upon Record, and so the Sheriff must have made his Return. Vide 11 H. 4. Fitz. Bar. 183. & 19 E. 3. Fitz. Scire fac. 120. & hic cap. 30.

Co. 4. 67. & 5. 90. But in all writs of Execution (except an Elegit) as upon a Capias ad satisfaciendum, Haber. facias seisinam, vel possessionem. Fieri facias, Liberate, &c. if the execution be duly done, although the writ be never Returned or Filed, it is no great matter, if the Plaintiff have his demand; for then he hath no cause to proceed any further therein: Yet in case of an Elegit, because the extent is to be made by an Enquest, and not by the Sheriff alone, that ought to be returned, or else it is nothing worth.

Co. 4. 67. a. Also where no enquest is to be taken, but only land to be delivered, or seisin had, or goods to be sold, &c. which are but matters in fait, these are good although that the writ be not returned.

If upon a Capias to arrest one, the Sheriff shall execute it, and shall not return it, he is punishable; for that the Capias is conditional, by these words, Ita quod habeas corpus ejus hic tali die, &c. But in an Habere facias seisinam, the writ is to put the party in seisin without any conditional words; and therefore though he return not the writ, the Sheriff is excusable. 16 H. 7. 14.

Upon a second Deliverance if the Sheriff shall deliver the Cattel to the Plaintiff, and shall not return the writ, he is punishable. See hic cap. 73.

13 H. 7. 1. Upon a Fieri facias, &c. if the Sheriff levieth the money or debt, but neither returneth the writ, nor payeth the money to the Plaintiff, he is chargeable to the Plaintiff in an action of account, &c. and to the Defendant in an action of Trespas. But if the Sheriff had payed the money to the Plaintiff, the execution had been good without return of the writ, Co. 5. 90. As also the Sheriff had been without danger to be sued either by the Plaintiff or Defendant.

And so note a difference between a Capias in Process, and a Capias ad satisfaciendum: sc. if the Capias in Process be not returned, the arrest is tortious; but if the Capias ad satisfaciendum be not returned, yet it is good, if the Execution be duly done, and the Plaintiff satisfied.

Co. 5. 90. Note also, if the Sheriff upon a Fieri facias shall execute the writ, and levy the debt, but shall neither return the writ, nor pay the money to the Plaintiff, yet first the levying of the Debt was lawful, and the Defendant could not resist the Sheriff therein: Secondly, the Plaintiff may have a new Execution against the Defendant, and the Defendant is left to his action against the Sheriff: Thirdly, the sale of the goods (by the Sheriff) by force of the Fieri facias is good; and such as shall so buy the goods may lawfully enjoy them. And where the words of the writ of Fieri facias be, Ita quod habeas denarios, &c. they are but words of commandment to the Sheriff to make return, the which if he doth not, he shall be amerced therefore; but yet the execution shall stand in its force. Fitz. Scire Fac. 120. Amerce.

In an action of Disceit against the Sheriff, for that the party was outlawed at the Suit of the Plaintiff, and that the Sheriff (then Defendant) did not return the writ, to the damage of the Plaintiff, &c. the Sheriff pleaded that he had sent the Writ by A. B. his servant, towards the Court, and that one of them which were named

La brief esloine. in the Exigent did rob and take away the same Writ from his said servant by the High-way, and it was holden to be no plea, but the action against the Sheriff to be maintenable. 41. Ass. pl. 12. Br. Action sur le case 121.

But note that in this former Case the Writ which was taken away from the Sheriffs servant, was through the default of the Sheriff; for it was taken away by one of the persons which were outlawed, whom the Sheriff ought to have taken and kept in prison, &c. Br. Bar. 68.

The head and chief Officer or Officers of every of the Kings Courts of Revenue, being of Record, shall have power and authority to set and assesse reasonable Fines and Amerciaments upon any Sheriff, for not returning, or mis-returning of any Writ to them directed and delivered out of any of the same Courts, touching or concerning the levying or answering of any Issues, Rents, or Revenues, or of any Debt due to the King, &c. 7 E. 6. c. 1.

If any Writ of Proclamation (upon any Exigent) directed to any of the Sheriffs of any of the twelve Shires in Wales, or Counties Palatine, &c. be delivered to any of the said Sheriffs, or to his Deputy, and the same Sheriff do not make true Return thereof into such Court out of the which the said Writ of Proclamation shall be awarded, he shall forfeit for every default of non-return to the King and Informer five pound, &c. 1 Ed. 6. cap. 10. & 5 E. 6. c. 26.

If any such Writ or Writs of Proclamation directed to the Bishop or Chancellor of the Bishoprick of Durham, or County Palatine, be delivered unto any of the said Bishops for the time being, or (during the vacation of the said Bishoprick) to the Chancellor of the said County Palatine, for the time being, or to his or their Deputy, or Deputies in manner and form aforesaid, and the same Bishop for the time being, or (during the vacation of the said Bishoprick) the said Chancellor of the said County Palatine for the time being, do not make true return of every such Writ and Writs of Proclamation to them directed into such Court and Courts, out of which the said Writ or Writs of Proclamation shall be awarded; for every such default of non Return, every such Bishop for the time being, and (during the vacation of the said See) the said Chancellor for the time being, so failing to make due Return, shall forfeit 5 l. to the King and Informer. 31 El cap. 9.

And yet note that there be some Writs which need not to be Returned; As upon a Recovery in a Quare Impedit, a Writ is awarded to the Bishop, &c. to remove the Incumbent, &c. this Writ is not returnable, ut dicitur. Dyer 260.

So upon a Recovery in a Quare Impedit, a Writ is awarded to the Bishop, &c. to admit the Clerk of the Plaintiff. Dyer 350.

Also the Writ de Returno habendo is not Returnable, Fitz. Replev. 3.

Also the Writ de vi Laica removenda, may be made Returnable, or not Returnable, Fitz. 54.

Also the Writ of Trespass, which is Viscountiel, is not Returnable, Fitz. 85. g. And so of other Viscountiel Writs. See hic cap. 113.

The Writ de Habere facias seisinam, is not Returnable, *Termes del Ley. Tit Habere fac. seisin.* Tamen vide hic cap. 63. *divers Retorn de ceo.*

And so in other Cases, except the Writ or Precept directed to the Sheriff requireth it, the Sheriff needeth not to make Return. Finch. 229.

Note that, if the Writ be Returnable, the day of the Return is appointed in the Writ. Finch. 237.

Also note, that it is no good Return for the Sheriff, that the party will not pay him his Fee (or costs, or charges) for executing the Process, and therefore he did not execute the Writ, or did not serve the Writ. 34 H. 6. Br. Ret. 10.

The Bishop is not bound to award his Inquiry of a Jure patronatus, (where the Church is Litigious) but where the party or his Clerk shall require it, and that at the costs of the party, or of his Clerk; for that he is a Judge in this Case, and therefore he is not to do it at his own costs and charges; but contrariwise where he is an Officer; for there when the Court writeth to him to certifie Bastardy or Matrimony, or the like, he is to do that at his own costs and charges.

7 H. 6. 32. 8 H. 6. 3. Br. 46. Note that in some Cases, although the Sherift serveth not, or executeth not the Process, but excuseth it by his return, it is good. As

1 In a Replevin the Sheriff returneth that the defendant claimeth property. Br. 46. Fitz. 77. c.

So in a Writ de Nativo habendo, if the Villain alledge to the Sheriff that he is free, and the Sheriff returneth this. Fitz. 77.

Ibid. And so of other impediments which shall interrupt the Sheriff to make his return, or take the party.

2 The Sheriffs of London return their custom. See Br. Custom 23. & Retor. 40. & 46. & Fitz. Ret. 7. & hic c. 73.

3* The Sheriff of Chester, or of any other County Palatine, return that they have a County Palatine within themselves, &c. Br. 46.

Ibid. 4 Also where the Sheriff returneth Mandavi ballivo libertatis qui nullum dedit responsum, &c. here although the Sheriff served not, or executed not the Writ himself, but excuseth it by such his Return, shewing thereby why he hath not served it, yet it is good.

So where the Sheriff returneth Tarde.

So where the Sheriff returneth that the Plaintiff Non invenit plegios de prosequendo.

CAP. 39.

Return de Mandavi ballivo.

As the Sheriff is the immediate Officer of the King, and his Courts, to execute all Writs and Process, so to him all their Writs shall be directed, although it be of a matter or thing done within a Liberty or Franchise, in which case the Sheriff must write or send his Precept to the Bayliff of the Liberty, who must serve and execute the same (as servant to the Sheriff) and must make answer (or return) thereof to the Sheriff; but the Sheriff himself must make the Return of the Writ into the Court. 2 H. 6. t. 7. Finch 52.

And yet in a Writ of Redisseisin, and in a Writ to enquire of waste, and such other Writs wherein the Sheriff is made Judge of the Cause, there if the Sheriff shall write to the Bayliff of the Liberty to execute the same, the Sheriff shall be amerced; for the Sheriff in such case must enter the Liberty, and execute such Writs himself, and must not return Mandavi ballivo libertatis: And so in other cases, as where the King is a party, &c. See hic c. 40. & 122.

For the forms of the Sheriffs Precepts or Warrants, to be made to the Bayliff of the Liberty, they are to be like to those which are made

by

by the Sheriff to his other Bayliffs (which see hic c.) saving that where those are directed Ballivo hundred. de R. &c. these are directed Ballivo Libertatis de R. &c.

Now for the manner of these Retorns de Mandavi ballivo libertatis, &c.

The Sheriff returneth Mandavi ballivo libertatis,&c. he shall do well to shew cause (in such return) sc. Eo quod præd. terræ & tenementa sunt infra libertatem de, &c. And yet without cause shewed, such a return was allowed to be good. 1 H. 6. Fitz. Ret. 2.

The Sheriff returneth Mandavi *J. B.* ballivo libertatis de E. cui executio istius brevis pertinet, &c. whereas he should have returned, quod ballivus habet retorna omnium brevium, & executio eorundem, and it was moved that the Sheriff should have been amerced.

Mandavi *B.* ballivo honoris de *T.* parcel Ducatus Lancastr. qui habet plenum retornum omnium brevium & executiones eorundem infra libertatem præd. & cui executio brevis illius totaliter restabat faciend. eo quod nulla executio inde in balliva mea extra libertatem præd. per me fieri potuit. Libr. Intr. 262.

The Sheriff returneth Mandavi *A. D.* ballivo libertatis Ducatus Lanc' &c. qui habet retorna omnium brevium infra libertatem prædictam, &c. Exception was taken against the Return, for that it was not ballivo libertatis Ducis Lanc' (for that the Dutchy hath no capacity to have a liberty) but yet it was holden a good return: And so Mandavi ballivo libertatis Sancti *Edmundi* de Burie, and Mandavi ballivo libertatis Ducis Lanc and the like, are good returns. Fitz. Ret. 24.

If the Sheriff shall return Mandavi ballivo libertatis, and shall not therein set down and return the proper name of the Bayliff of the Liberty, it is not good; for that such Bayliff is to be amerced for his default, which cannot be except his name be known to the Court; and his name cannot otherwise be known to the Court then by the Sheriffs return. Mich. 18 Jacobi Regis: And yet see 3 H. 6. Fitz. Ret. 3. if the Bayliff in his Return hath certified or subscribed his name, the Court hath thereby sufficient knowledge, &c.

Where the Sheriff returneth Mandavi ballivo libertatis de S. and doth not shew to whom he is Bayliff, or whose the liberty is, sc. ballivo. *J. D.* libertatis suæ de *S.* yet it was holden to be a good return by three Justices in 1 H. 6. but there Hales Justice held the contrary, sc. that the Sheriff in his return ought to shew who is Lord of the Franchise. See 9 E. 4. 19. Br. 54. & Fitz. Ret. 2. 4. 31.

The Sheriff returned Mandavi tali, &c. qui habet retorna omnium brevium & executionem eorundem per chartam Regis. And for that the Bayliff was not returned Bayliff of some Franchise, or Lord, the Sheriff was amerced; quære and see the Statute of West. 2. c. 39.

The Sheriff returned Mandavi ballivo libertatis, &c. and for that he did not return further that he had nothing within his Bayliwick, he was therefore amerced. 47 E. 3. f. 2.

If the Sheriff shall return Mandavi ballivo libertatis de *D.* who did nothing therein, whereas there is no such Liberty within the County, or nameth a Liberty which hath not Return of Writs, the Sheriff shall be punished as a disinheriter of the King and his Crown: And therefore it is ordained by the Statute of 13 E. 1. c. 39. (as a thing needful) for the Sheriff to have out of the Treasury of the Exchequer a note of all the Liberties within his County that have Return of Writs. Vide 13 E. 1. c. 39. Fitz. Ret. 40.

Mr. Bracton, libro 5. c. 32. saith thus, Excusatur vicecomes multoties propter

propter libertatem & impotentiam, quod libertates sine warranto ingredi non possit, nisi per defectum eorum qui libertates habent & retorna brevium per vicecom.& unde si præceptum sit vicecom.quod attachiet talem qui manens sit infra hujusmodi libertates, cum vicecomes ingredi non possit, faciat vicecomes retorna brevium ballivis præd.libertatis,& præcipiat ballivis quod tale præceptum Domini Regis exequantur, quo casu aut ipsi ballivi exequantur præceptum Domini Regis, aut nihil inde faciunt; Si autem illud plene fuerint executi, per hoc liberabitur vicecomes. Si autem nihil inde fecerint, sufficiat ad execusationem vicecomitis, quod mandet Justic. quod præceptum sit ballivis; Quo casu cum ballivi inde nihil fecerint, propter defectum eorum præcipietur vicecom.quod non omittat propter libertatem talem, quin attachiet, &c. talem quod sit,&c. Et sic poterit vicecomes libertates ingredi cum warrantum habuerit, quod alias ei non liceret.

Et in tiel cases brief issera al vic. de enter le liberty, de executer le Proces,&c. & de Summoner le Bayliffs del Liberty quod sint coram Justic. responsur. quare præceptum Domini Regis non fuit execut. Et si forte cum vicecomes ingredi voluerit, hoc non ei permittatur proper potentiam ballivorum libertatis, præcip. (ut prius) vicecomes quod non omittat propter libertatem talem, quin attachiet, &c. talem in forma prædicta. Et si aliquem invenerit resistentem, assumptis secum (si opus fuerit) militibus & liberis hominibus de com. ad sufficientiam, capiat corpora hominum resistentium, & illos in prisona salvo custodiat, donec Dominus Rex inde præciperit voluntatem suam; & nihilominus Dominus libertatis attachietur quod sit ad prædictum diem ad defendendum se, si possit, de prædicta transgressione, ad quam quidem si advocaverit, vel defendere non possit, Capiatur illa libertas in manum Domini Regis pro voluntate Domini Regis detinenda, quia libertatem meretur amittere qui permissa sibi abutitur potestate. Bracton ibid.

This then being the ancient Common Law of the land, was afterwards (most of it) confirmed by the Statute of Westm. 2. (which Statute was made after the time that Mr. Bracton wrote) the effect of which Statute of Westm. 2. to this purpose, is as followeth:

13 Ed. 1. 09. If the Sheriff doth return that he had directeth his Precept to the Bayliffs of some liberty (which indeed have return of Writs) which did nothing therein, then the Plaintiff shall have another Writ *Non omittat.* whereby the Sheriff shall be commanded that he shall not omit for any liberty aforesaid, but shall execute the Kings Commandment or Writ himself, and that he shall warn the Bayliffs to whom he returned the Writ, that they shall appear at a day contained in the Writ, to answer why they did not execute the Kings Precept; And if they do appear at the day, and do acquit themselves, that the Writ was not returned *Mandavi ballivo libertatis.* nor no Precept from the Sheriff made unto them, the Sheriff shall be forthwith condemned to the Lord of the same liberty, and likewise to the party grieved by delay, to restore him damages: but if the Bayliffs do not appear, and do not acquit themselves in form aforesaid in every judicial Writ, so long as that suit dependeth, the Sheriff shall be commanded that he spare for no liberty, &c. Westm. 12. 13 Ed. 1. 39

12 E. 2. 5. There shall be an Indenture made betwixt the Bayliff of the Franchise (which hath full return of Writs) by his proper name, and the *Indenture between the Sheriff and Bayliff.* Sheriff by his proper name, of every return which the Bayliff of any such Franchise shall make to the Sheriff: And if the Sheriff do change the return so delivered unto him by Indenture, and thereof be attainted at the suit of the Lord of the same Franchise from whence he hath

received

received the said return (if the Lord have received any damage, or if his Franchise be impaired) and at the suit of the party which hath received loss by this means, he shall be punished by the King for his false return, and also shall yield to the Lord and the party double damages. Stat. Ebor. 12 E. 2. c. 5.

Uncore si le vic. retorne auters persons (in un Pannell) que le Bayliff del Franchise ad retorne a luy, le retorn del vic. semble d'estre bon; mes le Bayliff del Franchise poet aver son action sur le case envers le vic. in tiel case. 30. Ass. 5. Br. Ret. 73.

In Assise, le vic. retorne part de ceux queux le Bayliff del Franchise retorne a luy & part de autres (contra al Indentures perenter le Bayliff & luy) & per Finch le vic. poiet retorne q'l il voet; Abr. d'Ass. 51. vide ibid. 93. *q. in Assise port de ters in Franchise, si le vic. fist tout le Pannel, ce. bon, uncore le Seignior del Franchise poit aver action vers le vic. &c.*

The Sheriff returneth mandavi ballivo libertatis, &c. who serveth and executeth the Process in part, this is not good; for that the Sheriff himself must execute or serve and return all, or the Bayliff all. See 2 H. 4. 1. & 8 H. 4. 16. Fitz. Ret. 41.

For the Sheriff cannot serve a Writ in part, and write to the Bayliff of a Liberty to execute the other part, because that the Writ is entire, and cannot be severed nor served by two Ministers or Officers: And therefore if the Sheriff (upon the Venire facias, or upon the Distring. Jurator. or habeas corpora Jurator.) shall return the Writ served by himself, as to part of the Jurors, and as to the rest, he shall return, Mandavi ballivo libertatis, &c. the Sheriff shall be amerced for such his return. Abr. d'Ass. 145. 19 H. 6. & 31 H. 6. Fitz. Retor. 14. & 20.

Mes si le vic. sur un Capias in det vers 3 reterne que il ad prise 2. & quant al auter il ad maunde al Bayliff del Liberty, &c. qui nihil respondit, &c. ceo est bon retorne, per les Justices al Serjeants Inn. Ter. Trin. 7 E. 6. vide Fitz. Ret. 22. accord.

If an assise be brought of Tenements in two Franchises, the Sheriff shall write to each Bayliff, and both of them ought to serve and execute it. Abr. d'Ass. 93.

If an assise be brought of land within a Franchise, and the Franchise extends into another hundred, the Sheriff shall write as well to the Bayliff of the Hundred, as to the Bayliff of the Franchise, &c. 22 Ass. Abr. d'Ass. 93.

A Venire fac. was returned served by the Sheriff, and upon the Habeas Corpora the same Sheriff returned Mandavi ballivo libertatis, and this return was holden to be good by all the Justices: for if the Sheriff had done wrong at the first, yet he may amend it when he will; And also it may be that there was no Franchise at the time of the Venire fac. returned, and that there was at the time of the Habeas Corpora: Also it may be that the Jurors were then out of the Franchise, and after at the time of the Habeas Corpora were within the Franchise: Also it may be that the Jurors were sufficient within the Franchise, and not without. Vide 26 H. 6. Fitz. Ret. 19. ibid. 22. contr. But the Sheriff in his return must certifie and shew some cause, &c. See Abr. d'Ass. 144, 145. hic postea & 8 R. 2. Fitz. Chall. 176.

And in a Præcipe quod reddat of lands within a Franchise, the Sheriff was amerced for that he returned Mandavi ballivo libertatis, &c. who took the pledges and made the summons, &c. for that the Sheriff himself ought to have taken the pledges de prosequend. although he cannot serve the summons; for first he ought to take pledges, and then shall 14 H. 6. 3. Br. Ret. 61. Abr. d'Ass. 93.

shall make his Mandate to the Bayliff, &c. and so the Sheriff may return the pledges de prosequendo, and the Bayliff of the Franchise shall serve and execute all the rest of the Writ. See 21 Hen. 7. ... cap. 52.

So where the issue is of land part Guildable, and part in a Franchise, the Jury shall be returned part by the Sheriff, and part by the Bayliff of the Franchise, and so they may join in the return. But the Distress shall be by the Sheriff only, if the Bayliff of the Franchise shall be slack. Vide Abr. d'Ass. 95. & 145.

Br. 50.

Tamen quære, de ceo quant parcel de le Pannel est fait per le Bayliff, & ... per le vic. ils sont deux Pannels: Auxi nul brief poet estre retorn per deux Ministers (ut super) & pur ceo semble que le ... serra tout, ou le Bayliff tout. Abr. d'Ass. 51. & 145. Fitz. Ret. 14. & 22.

Assise fuit port de tenements in 2. villes, & lun del dits villes fuit deins un Franchise, & l'auter in Guildable, & fuit doubt coment ceo brief serra icy execute; car icy deux mischiefs poent ensuer, sc. 1. Ceux de Franchise ne poent aver le view, per commandment de Bayliff, de ters hors del Franchise. 2. Poit ensuer que le Bayliff del Franchise ne unques server brief. Car home poiet touts foits mitter en le brief part del terre Guildable, &c. Vide 18 E. 3. fol. Abr. d'Ass. 94.

Nota que tiel part del County que est contributary inter eux mesmes a payer tribute ou common charges, est appel le Guildable; & si ascun special liberty la soit, ceo est appel le Franchise. Co. 8. 125.

Et ceo parol Guilde, est un brotherhood society, ou Company incorporate. Co. ibid. & Minsh.

38. Ass. p. 13. Br. Action sur le case 120. The Sheriff maketh his Precept or Warrant to one who is no Bayliff of the Franchise, who returned the pannel, by reason whereof it was quashed, to the damage of the Plaintiff, &c. who brought his action of the case against the Sheriff, and recovered his damages, notwithstanding that this was done by the advice of the friends of the plaintiff, and so pleaded, and besides the Sheriff shall be amerced therefore. *Warrant al un que ne Baliff del Franchise.*

The Sheriff (upon a Replevin) returneth Mandavi ballivo libertatis, &c. Qui mihi nullum dedit responsum, or returns that the Bayliff will not make deliverance, &c. these are no goods returns, for the Sheriff (ex officio, as it seemeth in such cases) ought himself to have entred the Franchise, and to have made deliverance of the cattel, &c. Fitz. 68. 1. Register 81. b. *Nullum dedit responsum*

Upon a Distringas for debt, the Sheriff returned Mandavi ballivo, &c. qui nullum dedit respons. And for that the Sheriff did not return, Quod null. habet exitus in ball. sua, therefore he was amerced. 47 E. 3. f. 3. Br. 23.

Note that wheresoever the return of the Writ pertaineth to the Bayliff of a Liberty, yet if the Sheriff doth it himself, it is well enough. 3 H. 7. 2. b. But the Lord of the Liberty may have his action *sur le case* against the Sheriff, &c. Finch. 52.

Si assise soit port de ters deins Franchise, le vic. poet faire tout le Pannel sil voet, & il est assets bon; & n'est auter doubt sinon per l'action le Seignior del Franchise vers le vic. (Et pur ceo l'author dit) Entretes le vic. si le Bayliff ne soit vostre amy. Abr. d'Ass. 93.

Also note where the Sheriff serveth the Process once of a thing local,
5 H. 7. Br. 89. as in a Præcipe of land, &c. he cannot after return Mandavi ballivo, &c. yet the Sheriff ought to take the pledges de prosequendo, and then may make his Mandavit, &c. ut super.

Yea wheresoever the Sheriff hath served the first Writ, he cannot (by some opinions) write after to the Bayliff of the Franchise, except

in his return he sheweth some special cause. Vide Abr. d'Aff. 144, 145.

But in the former Book of 5 H. 7. Keeble taketh this diversity, &c. between a thing permanent, and a thing removeable; for of a thing permanent, as in a Præcipe of Land, if the Sheriff hath served the first Process, he shall do ill, if afterwards he shall make his Precept to the Bayliff of the Liberty; for by his serving of the first Process he hath affirmed the Land to be within his Jurisdiction: But of a thing removeable, as a Trespass, or Debt, he may serve the Process; and when that cometh to the Capias, he may make his precept to the Bayliff of the Liberty, to take the body, for that the body is removable, which diversity was affirmed by the whole Court.

CAP. 40.

Where the Sheriff is to enter the Franchise.

All Original Writs are to be directed to the Sheriff of the County (as is shewed here before, cap. 20. & 39.) yea although it be of a matter within a Franchise, in which case the Sheriff shall direct his Precept to the Bayliff of the Franchise, who is to serve and execute the same; But the Sheriff must make the Return of the Writ into the Court. 2 H. 6. fol. 7.

Rey Party. And yet note that wheresoever the King is a party, as in every Felony, or suspition of Felony, or otherwise in any action, the Sheriff, ex Officio, is to enter the Franchise, and to execute and serve the Process himself, and is not to write to the Bayliff of the Franchise. Br. Franch. 18. 31. 38. Aff. 19. Br. Retorn. 78. Co 5 92. And yet if this clause, Licet fuerimus pars be in the Charter, then it seemeth otherwise. Plo. 243. Br. Fran. 31.

Ou viceunt est Judge. In a Writ to enquire of Waste, the Sheriff returned Mandavi ballivo libertatis, &c. qui nullum dedit respons. and the Sheriff was amerced; for that in this Writ he ought himself to have entred the Franchise; and to have executed the Writ ex officio, and without a Non omittas, &c. for that he is both a Judge and an Officer by the Stat. which is, quod accedat ad locum vastatum, &c. & ibi facere inquisitionem, &c. So in a Redisseisin; and in a Writ of Ward, &c. See more hic postea. Fitz. Retor. 52, 53. & 92.

Sur default le Bayliff. Also in other cases, upon the default of the Bayliff of the Franchise, the Sheriff is to enter the Franchise, and to execute the Process himself, or else he shall be amerced: As where the Sheriff Mandavit ballivo libertatis, and the Bayliff nullum dedit respons. See the Statute 13 E. 1. ca. 39. & hic postea tit. Bayliffs of Franchises. So where the Bayliff is a party. Fitz. 68. 1. Marlebr. c. 21. N. br. 44.

So where a Distress is taken within a Franchise, and the Bayliff of the Franchise will not deliver them, then the Sheriff upon complaint to him made, may deliver them. Stat. Marlebr. cap. 21. N. Br. 44.

But in the former Cases where the Bayliff of the Franchise maketh default, it seemeth safest for the Sheriff to have a Writ with a Non omittas therein directed to him, commanding him to enter the Franchise, and to make execution of the Writ, before he may enter the

the Franchise to execute the Process; for the words of the Statute of 13 E. 1. 39. are that the Sheriff shall be commanded, quod non omittat propter aliquam libertatem, &c. See Fitz. 68. f. 69. b. & 74. a. & 266. d. & P. Retor. 3. & Bracton hic c. 39.

And this Statute of Westm. 2. c. 39. (made Anno 13 Ed. 1.) doth give a Non omittas propter libertatem.

And by the Statute of Marlbr. cap. 21. & Westm. 1. cap. 17. (in fine) upon the default of the Bayliff, the Sheriff ought presently to enter the Franchise and make deliverance of the Distress taken, &c. Fitz. 68. f.

Issint si plee de Withernam *fait in le County Court sans brief, & le vic. maunde al Bayliff de Franchise de fair deliverance, & le Bayliff fait riens, adonqs le vic. potest ex Officio (sine breve) enter in le Franchise, & faire deliverance del Cattel:* Fitz. 68. f. & Regist. 81, 82. & Nat. Br. 43.

Si le vic. retorn quod propter libertatem aliquam non possit hujusmodi averia Repłegiare, tunc fiat breve de non omittas propter Libertatem. Regist. 82.

Mes vide ibid. que ceo nest pas tenus in lun case ne l'auter sans brief.

La est in le Registr. un non Omittas propter Libertatem, quin ingred. & Corpus ejus Capias, & in prisona donec debitum satisfecerit, salvo Custodias, &c. fol. 151. b.

Un non omittas propter libertat. quin ingred. Et Capias in Withernam, *donec, &c. cum pluries,* fol. 82.

Un non omittas propter libertat. quin omnia bona & Catalla, & medietatem terrar. &c. sine dilatione liberari facias per rationabile pretium, &c. Reg. Judic. fol. 5. b.

Also where the thing is Entire. See hic cap. 122.

Upon an extent of a Statute Merchant, if the Sheriff returneth that he directed his Precept to the Bayliff of some Franchise, he shall be punished, &c. Stat. de Mercatoribus hic cap. 24. whereby it appeareth that the Sheriff is to enter the Franchise, and to execute it himself, upon the body, lands, or goods of the Conusor being within the Franchise.

Also where the Bayliff of the Franchise maketh default, &c. and that a Non omittas be thereupon directed to the Sheriff, the Sheriff shall not only thereupon enter himself into the Franchise, and execute the Kings Writ, but the Sheriff also shall warn the Bayliff of the Franchise, that he be before the Justices at the day contained in the Writ; and if he come not and excuse himself, then all Writs Judicials issuing during the same Plea, shall be Writs de Non omittas, &c. and the Sheriff shall make execution of them, hanging that Plea. Termes de Ley.

But in other Cases where a man hath Liberty to return Writs, and to execute them, &c. if there the Sheriff or his Officer shall enter the Liberty without a Non omittas, and execute any Process there, although the same be good, for that the Sheriff is the immediate Officer, yet the Lord of the Liberty shall have his Action of the Case against him. Fitz. 95. b. See hic postea, cap. 112.

Bayliff of Fee. Where there is a Bayliff of Fee, the Sheriff shall not return Mandavi Ballivo (as it seemeth) nor write to the Bayliff of Fee, as to a Bayliff of a Franchise or Liberty; but he shall send his precept to him as to the Bayliff of the Guildable: and the Sheriff shall return his answer, or make his return, as if the Sheriff himself had served the 27. Ass. 65. Br. Proc. 98.

Proces, and shall not in his return make mention of the Bayliff of Fee, as he shall do of the Bayliff of a Liberty, And yet note that this Bayliff is an Officer of Fee within this Precinct; so that if such a Bayliff of Fee will not execute the Proces, a Non omittas shall not go out to the Sheriff, &c.

CAP. 41.

In quel court. All Proces against any person, directed to the Sheriff, ought to be duly and truly executed, and returned into such Courts out of the which such Process shall be awarded. See hic cap. 23. the Form.

Mitter lour nosme al retorn. The Sheriff (as also the Bayliffs of Liberties which receive the Kings Writs returnable in his Court) ought to set their names to their return (sc. their sirnames and Christian names, Plo. 63. a.) so that the Court may know of whom they took such returns, if need be: And this may seem to be by force of the Statute of 12 Ed. 2. cap. 5. Vide 8 H. 6. Fitz. Retor. 8.

Et uncore dicitur que per le Common Ley le vic. doit mitter son Nosme sur chescun brief que il retorna, & que le dit Stat. 12 E. 2. *done penalty vers le vic. sil ne mitter son nosme al retorne: mes ceo Statute ne fait le Ley que le vic. doit retorne ceo, quia fuit le Ley devant.*

And if any Sheriff or Bayliff do leave out his name in his return, they shall be grievously amerced, by force of the said Statute of 12 E. 2. Also by the opinion of Jenny, 9 E. 4. fol. 20. a Return without the Sheriffs name thereto, is void; and an Utlary was reversed for such cause, 26 H. 8. 3. Thel. 385. See Plo. 63. a. that the Writs are directed to the Sheriff of such a County generally, without naming his name, but he must put his name to the Return; and this was a common difference holden at Motes in Court and Chancery. Br. 48. 54. 81. 129.

Jeo aye view le report d'un case in le Common Bank,. An. 29 Eliz. *Ou sur Utlary fuit monstre que le Capias fuit retorne per les vic. de* London *in ceux parol viz. Responsio* J. D. *&* Henrici Billingsly *(sur le dorse del Capias) sans dire Vicecom. Et ceo fuit alledge al Court pur Error, pur reverse le utlary, pur ceo que icy ils ont monstre que ils fuer. vic. Et un direct President fuit lie,* in 16 H. 7. Rotul.

Lou un utlage in action de Det, le vic. interlesse son nosme ou addition de vic. sur le retorn del Exigit, per que le utlary fuit reverse; & issint semble al Justices in le case supra, mes ils voilent adviser quia pur le Royne.

If the Sheriff shall not put his name to the return of a Jury, or shall return the Venire fac. without any indorsement, these are erronious, and not to be amended. Co. 8. 162, 163. & 5. 41, 42.

These

These Returns are to be indorsed on the back of the Writ; And yet if that be made on the inner side of the Writ, it is good enough.

If one returneth a Writ in and by the name of the Sheriff who is no Sheriff, this is erronious by Gascoyne, 21 Hen. 4. *& ne serra amend.*

Ou serra amend. But note that the return of the Sheriff being erronious, or not good, yet it may be amended by the Court in divers Cases; yea although such return were made in another Sheriffs time, 22 H. 6. 45. 33 H.6. 47. 37 R. 6. 12. & 2 H. 5. 8. Br. 58.

And the Court may cause the old Sheriff (in whose time such return was made) or his Under-sheriff, or his Clerk or Deputy to amend the same; or any other Clerk of the place. Fitz Amendment 40. 33 H. 6. 47.

As where the Sheriff by negligence shall omit any of the Jurors in the Distringas, which were in the Venire facias, or shall return T. B. for A. B. Or shall return octo tales for decem tales; these shall be amended by the Sheriff upon his examination in Court.

The Sheriff having returned too small issues, prayed to amend his return, and it was suffered. Br. Issues 1.

If the Sheriff do return smaller Issues upon any Distress, then the value of the Lands of the Defendant do extend to, between the Teste and the Return of the same, *Le Plaintiff poiet cause le vic. destre Amerce & called into Court de amend ses Issues pur advantage le Roy.*

Also if the Sheriff shall subscribe his name to the Return, omitting this word, *Vicecomes*, yet this is amendable, per Curiam. Mich. 13 Jacobi Regis. Vide Stat. 21 Jac. cap. 13.

See plus Dyer 64. & hic cap. 56.

Mes apres verdict sur issue trie &c. la sont divers defaults in retorne le vicont queux ne sont amendable. Vide hic postea Retorne de Venire facias.

Uncore per Stat. 18 El. ca. 13. *imperfect ou insufficient retornes del vic. sont remedy & amendable.*

Mes si soit in question lou le vic. fist tiel retorn, ou nemy, ceo serra trie per le vic. 9 H. 4. 1. Co. 9. 31.

Auxi retorne fait per le Southvic. si soit deny, ceo serra trie per le Southvic. Et le vic. ne poet disavower ceo, sil confess luy destre son Southvic. 10 H. 4. 7. Co. 9. 31.

CAP. 42.

Where a man may Averr against the Sheriffs Return, and where not.

P*Ur ceo que le vic. est un Officer depute per le Ley, al Roy & ses Courts, home ne serra admit de averrer directment encounter le Retorne del Vic. sinon in ascun special Cases: Et le reason est, pur ceo que lou Justice est d'estre administer & execute, le Roy, & tiels queux sont ses Judges (& desouth luy sont de administer Justice) doient necessariment mitter un trust & confidence in ascun person: Et si chescun home puissoit Averr encounter ceo*

que

que le vic. fera, donque Justice ne unques serra execute, mes serra touts foits, ou sepius, delay, &c. Et uncore a contrario pur ceo que viscounts & lour officers ont sepius estre trove faulty de lour parts, in fesan. faux Retornes al briefs le Roy, &c. le quel arise in part per corruption, & in part per lour negligence & remissness: Et auxy pur ceo que tiels faux Retornes fuer. sovent foits valde mischevous a les subjects, ideo les Statutes & Leys de ceo Realm, ont in ascun cases allow homes de averr encounter le Retorne del vic.

And first by the Statute of Westm. 2. c. 39. upon a Distringas against the party, the plaintiff may averr that the Sheriff hath returned too small issues, or that the Sheriff might have returned greater issues upon the defendant: but (by some opinions) upon a Distringas Jurator, if that the Sheriff shall return too small issues, that is out of the Statute. 10 H. 7. f. 11. See 20 H. 6. f. 26. 13 E. 1.

By the Statute made 1 E. 3. c. 5. A man shall have an averrment against the false return of Bayliffs of Franchises which have return of Writs, and shall recover, as well against them as against the Sheriff, as well of small issues returned, as in other cases, so that it be not prejudicial to the Lords, &c. Dr. & St. 134. 5 H. 7. f. 27. 1 E. 3.

Sur Capias le vic' retorn Non est inventus, le plt. monstre coment le vic' fist precept al Bayliff del Franchise de prender le Corps, le que luy Arrest & deliver luy al vic' le quel chose il voet Averr. Mes per totam Curiam il n'avera cest Averment encounter le Retorne del vic. ne in nul case, sinon pur trope petite issues per le Stat. Car si le vic. ad misfait le plt. poet suer luy, &c. 2 H. 4. 14. Fitz. Averrment 17.

Uncore proces vers vouchee le vic. retorne le vouchee mort, le demandant poet averre que est in vie, pur saver son Inheritance, sc. *le garranty.* Finch. 52. 14 E. 3.

Auxy home avera averrment encounter retorne del vic. quant le party n'avera l'effect de son suite, come sur Cepi Corpus, retorne quod mortuus est in prisona. 3 E. 4. 20. Finch. 52.

Averrment contrary al retorn del vicount. *Sur* Venire fac' *le vic. retorne* 24. *Jurat', & sur le* Habeas Corpora *il retorne que,* 12. *de eux sont morts, le Plaintiff avera averrment que sont in vie encounter le retorne,* 20 E. 4. f. 11.

Sur exigent le vic. retorne quod mortuus est, & le Contrary fuit Averr, sc. *que le party fuit in vie, & le vic. fuit Amerce pur tiel faux retorne.* Liber. Intrac. f. 336.

In debt vers deux, al Capias le vic. retorne Cepi Corpora *de ambideux, &c. uncore lun de eux fuit resceive adire que l'auter fuit mort, & abate le brief non obstant le Retorne.* 50 E. 3. 7.

Le plaintiff pria que le defendant in repleg' gager deliverance, & le defendant dit que ils deviont in pound overt, in default del plaintiff, & pria brief al vicount si constare poterit; *si le vic' sur ceo brief retorne que sont mort, le pl' poit averre le contrary,* Sicut alias 30 H. 6. 2.

Vicount Retorne Mandavi ballivo libertatis de N. *que sic respondit, que auter foits le def. fuit commit al prochein gaole per Auditors sur son accompt pur arrerages, & que il esteant Bayliff de ceo gaole luy amesne al prison, & il vient eins sur* Cepi corpus, *& dit que nul tiel account, & avera cest averrment nient obstant le retorne del vic.* 28 E. 4. 5.

Que le brif fuit deliver. *Un sue brief de* Nativo habendo, *le quel fuit deliver al vic. & puis le defendant sua brief de* libertate probanda, &c. *& le vic. retorne que nul brief de* Nativo habendo *fuit deliver a luy & lauter averre le contrary & poet.* 18 E. 4. 7.

Le vic' retorne sur Exigent, Quarto exactus, &c. Et quod non habuit tempus ad aliquem Com. ultra dictos quatuor Com. ad dictum I. ulterius exigendum: Et averrment fuit prise, que brief de Allocat' fuit deliver al vic.

de Recordo, & deux Counties fuer. tenus apres, & issint le Retorne faux, & le vic. fuit fine pur ceo. Liber Intra. tit. Exigent. in Retorne div. 4.

Auxy vide pur utlary de felony. M. 1 E. 3. f. 40. *Ou le vic' retorne le party utlage, & il averre que il se render al Quintum Comitatum. Et le Court ceo sera al Coroners destre apprise de ceo.* Dyer 223.

Le vic' retorne sur Exigent, *quod* 4. Exactus, *& nient obstant averment fuit prise que fuit utlage, & ceo fuit certifie per Coroners, & pur ceo le vic. fuit amerce al 50 marks,* 36 H. 6. 24. Amerce al 50 marks.

Home ne serra resceive de traverser directment le retorne del vic. Come ou le vic. retorne summons, ou Attachment, Rescous, Non est inventus, & hujusmodi, home ne dira que il ne fuit summon, ou que il ne fuit Attache, ou que il ne fist Rescous, ou que le party fuit deins son Baylywick; mes poiet dire ceo que estoiet ove le retorne del vic. Come adire, quod non summonitus fuit accordant al Ley, vel Nient attache per 15. jours & tiels que estoit ove le Retorne del vic' sans ascun Contradiction. 7 H. 7. 4. Br. Averrment, &c. 16.

Et uncore vide Dyer 212. *que si le vic. retorne Rescous, le party avera Traverse a ceo retorne, & hoc per force de ceo parol Convincatur, in le Stat.* Westm. 2. c. 40. *que dit, & si forte vicecomes cum venerit resistantiam invenerit, Certificet Curiam de nominibus, &c. Et si hujusmodi resistentes Convincantur, punientur, &c. quel parol Convincantur prove que ils poient aver. un Traverse, &c.* Liber Intrac. f. 58.

Ou le vic' retorne Pledges de prosequendo, ou de Returno habendo. En Scire fac. *apres vers eux, ils ne serront resceive adire que ils ne fuer. Pledges, car ceo est directment contra al retorne del vic.*

Mes un poet aver averment in auter action vers retorne del vicount, come in covenant le vicount retorn luy garnish, uncore in le def. poit averre le contrary. 11 H. 17.

5 E. 4. 1. *Nota un ne poet aver direct averrment encounter retorn de vicount in mesme le action; mes in auter action poet; come in det vers Bayliff de Franchise pur escape dun retorn per le vicount que il ad prise luy per warrant a luy direct sur* Capias ad satisfaciend. *poet ore in cest action de det averre que nul tiel warrant fuit a luy direct.* Ne traverser directment, sinon in auter action.

Issint in action sur le case vers le vic' home avera direct averrment encounter retorne del vic' in auter action. 5 E. 4. 2. Finch. 52.

3 E. 4. 20. *Trespas sur Pone, biens fuer' retorne attache, & quant le def. appear, il ad brief al vicount a deliver a luy ses biens arere, & le vicount retorne que redeliveravit, icy le defendant ne poet averre le contr'. Mesme le Ley in retorn de seisin in dower, ne poet aver averrment al contrary, car le vicount est officer a que credence serra done, &c. mes ou un est sans remedy, & destre disinberite la est auterment; come si le vicount in precipe vers un, retorn que il est mort, le demandant poet averre que il est in vie: Issint poit dire nient attach per 15. jours, que nest direct averrment, mes sur* habere facias seisinam, *si le vicount retorn* habere feci seisinam, *l'auter ne poit averre le contrary,* 3 E. 4. 20. Ou que person inheritance ja perde.

Home navera averrment directment encounter le retorn del vicount sinon que son person est d'estre charge, ou que son Inheritance a touts jours est destre perdu, & ne poit per le Ley aver remedy de saver mesme le Inheritance. 3 E. 4. 20. Ou que person destre charge

Et sic nota que home poiet traverser directment (& aver encounter le Ret. del vic') in auter action.

Ou in mesme le action, quant son Inheritance, ou l'effect de son suite, serra perde, ou son person d'estre charge.

Ou in favorem vitæ; vide Finch. 52. *que in action sur case vers vicount, home avera direct averrment encounter Retorn del vic'.*

Ou le vicount, sur Capias, *retorne* Non est inventus, *home ne poet averr encounter cest retorne.* 2 H. 4. 15.

Ou sur Corpus cum causa, *hors del Common Bank*, *le vic' retorne que le party est lie al peace (que est pur le Roy) & nient obstant que soit faux, ne poiet aver averrment in ceo brief, al contrary.* 9 H. 6. 44.

Ou le vic' retorne Mandavi ballivo libertatis Archiep. Ebor. *que retorne summons, le defendant ne poet averre que le terre est deins le Franchise de* Richmond.

Brief de Disceit est retorne per vic', & le def. averre que les summoners ore retorne ne fuer' les summoners in le Præcipe, *& ne poit aver cest averrment encounter le retorne del vic'.* 5 E. 4. 7. & 33 H. 6. 11. 34 H. 6. 5.

Ou vic' retorne un utlage, ne poet averre que ne fuit Exactus forsque *trois ou quatuor foits (ou que ne fuit proclaime forsque* 3. *ou* 4. *foits) mes pur son remedy est daver son action sur le case vers le vic'.* 10 H. 7. 23. Br. Action sur le case 122. See hic tit. Proclam.

Mes in appeal le party poet aver tiel averrment. 10 H. 7. 23. *car ceo cest in favorem vitæ.* Dyer 349.

In favorem vitæ. *In brief de Enquir' de wast, ac in brief de Redisseisin le vic. est Judge, & pur ceo in ceux briefs si le vic. fait faux retorne, le party ne aver averrment encounter son retorne: ne le party ne poet averre que le vic. ne ala al lieu, &c.* 10 H. 7. 28. & Br. Rediss. 4. 6. 30. Ass. p. 35. 7 H. 7. 4.

Car home ne serra resceive in nul case de alledge ascun chose, contrary de ceo que est fait per un come Judge. 7 H. 7. 4. Br. Offic. 10. 37. & 42.

Issint si le vic. teigne son Torne apres son mois, & fait Record deins le mois, & home est endite de felony a mesme Torne, semble le party ne poiet averr encounter cel.

Auxi si le vic. ou son Torne prender Inquisition per 8. *Jurors, & retorne que il fuit per* 7. *semble le party n'avera Traverse a ceo.*

Vide plus Kitch. Retorne brevium. 45, 46, 47.

CAP. 43.

Si retorne de vicount server pur Indictment.

Rescous de felon. N*Ota que coment que est communement dit, que encounter retorne del vicount il ny ad ascun traverse, averrment, ou respons; uncore si le vicount retorna un Rescous fait a luy; dun que fuit arrest per luy (ou per ses Officers) pur felony & que est prise hors de son possession; icy non obstant que ceo retorne soit matter de record, &c. uncore nest sufficient de server come un indictment vers cestuy que fist le rescous (de mitter luy a respond. sur ceo, si nest trove per Enquest) come appiert.* Fitz. Coron. 48. & Stamf. 31. cap. & 95. 1 E. 3.

Mesme le Ley est, si le vic' retorne que le prisoner est escape, &c. Vide Fitz. Coron. 149. & Finch. f. 69. & Stamf. 31. c. *Lou mounsier* Stamford *done ceo reason,* sc. *pur ceo que est contrary a le Stat. fait.* Anno 25 E. 3. c. 4. *que voet que nul soit imprison, ne ouste de son franktenement sans presentment, ou brief original, &c.* 1 E. 3.

Mes Rescous retorne per le vic. d'un arrest sur Capias, ou pur auter cause (& nemy pur felony) est in lieu dun Inditement, & sur le retorne l'auter serra mise a responder, &c. 13 H. 7. f. 21. Br. Rescous 8. & Fitz. Attach. 1. & Retorn. 32.

Et pur ceo in tiel case le vic. in son retorne doit monstre le certainty del lieu, jour, & An. & del persons queux font le Rescous; mes coment soit sans Addition semble destre assets bon, hic cap. 36.

CAP. 44.

The return of the old Sheriff shall not conclude the new Sheriff. And therefore where the Sheriff returned a Jury de vicinet' de D. afterwards the new Sheriff returned upon the Distringas, quod non fuit tale vicinet. de D. in dicto comitatu, and this return of the new Sheriff was holden to be good. 3 H. 6. 56. Old Sheriff

Br. 5.

34 H. 6. Upon a Fieri fac. the Sheriff returned quod cepit bona ad valenc' x l. ad quem non invenit emptores, whereupon there went out to the new Shriff a Vendic' expon. who returned that his Predecessor non cepit bona; Ideo, &c. and it was holden to be good.

And yet if the old Sheriff returneth a Juror in issues, and the next Sheriff at the Distringas return the same Juror nihil, the last Sheriff shall be amerced; for he cannot return nihil, contrary to the former return of his Predecessor, but he ought in such case to pursue the last return; and if any Juror hath sold his land, or that it be recovered from him, or that the Juror was seized in the right of his wife, who after died without issue, or if the Juror had an estate conditional, and the condition be performed, and thereupon the Feoffor hath re-entred, or the like, in these cases the Sheriff ought to return the special matter, and to conclude, Et sic nihil habet: 19 H. 6. 38. Br. 49. Fitz. Ret. 13.

And if the Sheriff shall return a man sufficient, upon the Venire fac. who is not (nor ever was) sufficient, whereby the next Sheriff is charged with the issues, he shall have an action of Disceit upon the case against his predecessor, for that he cannot return nihil contrary to the former return of his predecessor, by the opinion of Paston in the former book and case of 19 H. 6 Br. Ret. 49. & Fitz. 13.

19 H. 6. And yet by the opinions of Fortescue and Markham (in the same case) if the old Sheriff hath returned the defendant sufficient, and the next Sheriff shall return him nihil, this is good, for that the plaintiff may have a Capias, and an Exigent against him; but otherwise in case of a Juror: Br. 49. & Fitz. 13.

Note that the Sheriff cannot summon or distrain himself, nor his fellow Sheriff within a City. Now, what manner of return they shall make thereof.

In a Præcipe quod reddat against Tho. Wyks one of the Sheriffs of the City of Gloc. and two others, the Sheriffs returned that they could not summon Tho. Wyks (one of the Sheriffs) which was sued, and they made their return after this manner.

Summon. infranom. Ed. Mi. & Jo. K. { John Den. Ri. Fen.

Et quoad summon. infranom. Tho. Wyks Justic. infrascr. certific. quod idem Thomas & ego Thomas Wyks jam unus vic. Civit. Gloc. sumus unus & idem, & non alius neque diversi. Ideo ego præfatus Thomas, & H. H. alter vic. civitatis præd. meipsum secundum exigentiam illius brevis Summon. non possumus.

Responsf. prædictor. { Tho. Wyks. H. Hyde.

Et ceo fuit adjudge bon retorne Anno 7 Eliz. Benlows Reports.

Aliat. Baron. infrascript certifico quod ego H. W. miles modo sum vic. Com. C. Ideo meipsum distringere non possum, prout interius mihi præcipitur. Br. proces 9.

Vide Plus hic c. 30. & 31.

CAP. 45.

Other Rules concerning the forms of Retorns.

NOte that in every original Writ, where summons lieth, the Sheriff must first summon or warn the tenant or defendant to appear and answer, &c. and this must be done in the presence of two summoners, &c. (vide hic c. 31.) which being done, the Sheriff must return the Writ in this manner, sc. if the defendant be sufficient, first he must return two common Pledges for the Plaintiff, and then the names of the summoners, as followeth:

Responsio A. B. vicecom. com. infrascript.

Plegii de prosequendo { Joh. Doo. Ric. Roo.

Summonitores infranominati J. S. (the Defendant) } { Will. Brown. Rob. Woolward.

And the like return may be made in all actions real, if the Tenant or Defendant be sufficient.

But if the Tenant (or Defendant) be insufficient, then the return may be thus:

Responsio A. B. vic. Com. infrascript.

Plegii de prosequendo { Joh. Doo. Ric. Roo.

Infranominatus J. S. Nihil habet in balliva mea per quod (or unde) Summoniri potest. (If it be in any real action; or in any action of Annuity, Covenant, Debt, or other Writ, where summons lieth:) And yet if there be no land whereupon the Tenant may be summoned, quære if this (Nihil) be a good return, except that the Sheriff returneth further, Nec est inventus, for that the Defendant may be summoned by his person. If it be in Trespass, or upon a Distringas, upon a Scire fac. or Fieri fac. and that the Defendant be insufficient, see in what manner those returns shall be made, hic postea c. 67.

But if the Sheriff will not make execution of the Writ, but will delay the same, then they will return it in one of these two sorts.

Responsio A. B. vic. Com. infrascript.

1. Infrano-

1. Infranominatus J.S. non invenit mihi Pleg. de prosequendo.

And note that in every Writ which hath therein this clause, (Si fecerit te securum de clamore suo prosequendo, &c.) there the Sheriff is to take sureties (or Pledges) of the Plaintiff, that he shall prosecute his suit; or otherwise the Sheriff needs not to execute the Writ, nor to make any Precept to the Bayliff to execute the same. Hic c. 52.

2. Illud breve mihi deliberat. fuit (or mihi venit) adeo tarde, quod illud exequi non potui propter brevitatem temporis.

And it seemeth that the Sheriff may return Tarde, in every Writ except in an Attachment, and in a Capias. Hic 36 & 53.

But let the Sheriff beware in making of these two last manner of returns, that they be true; otherwise it is not only a breach of his Oath, but also he is punishable for such his false return.

Concerning Pledges. See plus hic c. 114.

Now it followeth to shew and set down the usual forms of Returns, &c.

The form of the Precept of the Judges, directed to the Sheriff to summon the Assizes, and Gaol-delivery, see in the Register of the Judicial Writs, f. 30. & liber Intrac. 443. with the return thereof.

CAP. 46.

Returna Summon. Assis.

1. Virtute istius præcepti mihi directi venire feci coram Justiciariis infrascriptis, ad diem & locum infra content. omnia brevia Assisarum, Juratorum & certificationum in Com. C. infrascript (coram quibuscunque

Fitz. 181. Cromp. 205. Justic' tam per diversa brevia Dominæ Elizabethæ, nuper Reginæ Angliæ, quam per diversa brevia Domini Regis nunc) una cum pannellis, attachiamentis, reattachiamentis, summon. resummon. & omnibus aliis adminicul' Assisarum. Juratos & certificationes illos qualitercunque tangent. Venire feci etiam coram præfat' Justiciariis ad Gaolam dicti Domini Regis Castri sui

2. Cantabr' de prisonibus in eadem existentibus deliberand. assignand. ad

* Or in gaola com. præd. præfat' diem, omnes prisonar' in * goala prædicta existent', una cum eorum attachiamentis, reattachiamentis, & omnibus aliis adminiculis prisonar' illos qualitercunque tangent', & de vicineto cujuslibet villæ & loci ubi felon' unde iidem prisonarii indictati appell' sive arrestat' existunt fact. fuerunt, tam infra libertates quam extra, xxiv. probos, & legales homines, quibus rei veritas melius sciri poterit & inquiri: Et qui prisonar' illos nulla affinitate attingunt, una cum quatuor hominibus & præposit' villæ & loci eorum ad faciend. ea quæ tunc ibidem eis ex parte Domini Regis nunc injung'. Pub-

3. licè etiam proclam' feci per totam ballivam meam, quod omnes illi qui sequi voluerint versus prisonar' illos seu eorum aliquem, quod tunc sint ibi versus eos prout justum fuerit prosecutur'. Scire feci etiam omnibus Justic'

4. pacis, Coronator. Seneschall' dominorum & magnat', & ballivis libertat. & hundred. com. prædicti, quod tunc sint ibidem cum rotulis, recordis, indictamentis, & aliis memorandis suis, ad faciendum ea quæ ad officia sua pertinent, prout interius mihi præcipitur.

Residuum executionis istius præcepti patet in quibusdam schedulis huic præcepto annexatis.

A. B. Armig. Vic.

Et donque sequitur les Pannels de 24. de chescun Hundred de mesme le County, que serra annex al Retorne del dit Precept. Cromp. 206.

The Retorne of the Precept for the Gaol-delivery.

Executio istius Præcepti patet in diversis pannellis eidem præcepto consut. Et ulterius proclamari feci per totam ballivam meam, quod omnes illi qui prosequi voluerint versus aliquos vel aliquem, de ullo infracontento pro Domino Rege, aut pro seipsis, quod tunc sint ibidem cum billis suis in forma juris prosecutor. &c. Libr. Intrac. 443. b.

Auxi un Kallender de nominibus Justic. pacis, Coronatorum, Seneschall. Ballivorum libertatum & Hundredorum, & Prisonar. (queux sont in le Gaol, seu que sont bail per les Justices apres que fuer. commit. &c.) serra auxi deliver per le vic. al Justices de Goal delivery: Le forme de que vies, hic cap. 98.

And the Warrants which the Sheriff must make by vertue of this Precept (for the summoning of the Assizes) to the Bayliffs of Liberties, and Bayliffs of Hundreds, must contain in them the whole substance of this Precept: but whether it be in Latin or English, it is not material, so that it be made in due form: and it is needful that the Sheriff keep for himself a particular note of the names of such persons as he nominateth in his Warrant, to be summoned to serve in or upon the grand Jury, and not to leave it to the discretion of Bayliffs to put in and out whom they list in that service.

The form of the Warrant made by the Sheriff or Under-sheriff, for the Summoning of the Assizes.

A. B. miles vic.comitatus prædicti (ballivo libertatis de *C.* vel ballivo Hundred. de *A.* salutem, Virtute cujusdam præcepti mihi direct, tibi mando, Quod venire facias coram *Jacobo Ley* Milit. & Barronetto, & *Johanne Dodderidge* Milit. &c. Justiciariis Assis. in comitatu prædicto ad Assisas apud Castrum Cantabridg. in comitatu prædicto decimo die August. proxim. tenend. (or thus, die Lunæ existent. vicesimo die M. proxim. futuro) omnia brevia, &c. Necnon, &c. seperal. person. subscript. ad faciend. ea quæ tunc & ibidem ex parte Domini Regis eis injungentur; Publice etiam proclamari facias per totam ballivam tuam quod omnes illi qui sequi voluerint versus prisonar' in goala (Domini Regis) comit. prædict. quod tunc sint ibi versus eos prout justum fuerit prosecutorum: Scire facias etiam omnibus Justic. pacis, Coronat. seneschallis Dominorum & Magnatum Escheatoribus, ballivis libertatum, & omnibus capital. Constabular.infra hundred.tuum,quod tunc sint ibi cum rotulis, recordis, indictamentis, & aliis memorandis suis, ad fac. ea quæ ad seperalia officia sua pertinent. Et quod tuipse sis adtunc ibidem ad faciendum omnia ea quæ ad officium tuum pertinent: Et habeas ibi nomina prædictor. Justic. Coronat. Seneschallium, Escheatorum, ballivorum libertat. Necnon capitalium Constabular. una cum hoc præcepto sub periculo incumbente. Dat. sub sigillo officii mei tali die & Anno,&c. Anno Domini 1622.

Cantab. — Set down their Titles at large.

A. B. Miles Vic.

Aliter. *A. B.* miles vic. &c. Ballivo Hundred. de Radfeild salutem. Ex parte Domini Regis tibi mando, quod per totam Ballivam tuam publice proclamari facias, deliberac. goalæ Domini Regis Castr. Cantabr. essend.

essend. coram Jacobo Ley milit' &c. & sociis suis Justic. Domini Regis ad Assis. &c. apud Castrum Cantabr. die Lunæ, &c. Et quod omnes illi conquer. volentes versus aliquos prisonar. infra Gaolam præd. ad locum præd. Ac. 24. probos & legales homines Hundred. præd. de vicin. in quibus aliqui prisonar. indictat. arrestat. vel appellat. exist. Una cum quatuor hominibus & præpositis cujuslibet villæ, & loci in quibus prisonar. præd. capt. fuer. tunc sint ibidem parat. ad audiend. & faciend. &c. Et habeas ibi nomina Jurator. præd. Et hoc præceptum, &c. Datum die, &c.

Tibi etiam mando quod capias *T. C.* de *J.* (or has personas subscript.) Ita quod corpus ejus (or corpora eorum) habeas coram Justic' prædictis ad diem & locum prædict. ad respond. dicto Domino Regi de quibusdam transgr' & contempt' unde indictatus existit, (or indictati existunt) & hoc, &c.

Subscriptio. Tibi etiam mando quod venire fac' has personas in schedula huic warrant' annexa, nominatas; Ita quod sint ad diem & locum prædictum ad faciendum ea quæ eis tunc & ibidem injungentur.

p. *H. S.* subvic'.

And file a Schedule to the backside of this Warrant; in which Schedule may be set down the names of such as the Bayliffs shall warn for the Great Enquest by themselves, and for the Jury of Life and Death by themselves. These two last subscriptions, or the like, may be written under the former Warrant, and then the Warrant to be signed under the Sheriff or Under-sheriffs hand and seal of Office: Or else at the end of the Warrant (sc. under it) the Sheriff or Under-sheriff may set down the names and dwelling-places of such as he will have warned to serve in or upon the Grand Jury in particular; and he shall do well to keep a note of them, that he may be able to shew to the Court, if need require, who he had determined to have returned for that service, if they had come; and if the fault fall out to be in the Bayliff, then he shall be punished, and the Sheriff excused.

Note for this Great Enquest (or Grand Jury) it is meet that three or four be returned out of every Hundred: And the names of the Hundred to be written in the Margent of the Return, against the names of the Hundredors. And if the Sheriff shall return any such Jurors (either to the Assizes, or to the Sessions of the Peace) without giving them warning by his Bayliff, the Sheriff is fineable.

CAP. 47.

Lib. 367. The form of the Precept of the Sheriff to summon the Sessions of the Peace. See in Mr. Lambard 367. impres. 1599.

And note that such Precept for the summoning of the Sessions of the Peace, ought to bear Teste under the names of two Justices of the Peace at the least: And not of the Custos Rotulorum alone.

And it must be to summon the County: viz. 24. probos & legales homines of every Hundred of the same County: And by the same Precept

cept he must command all Constables, Bayliffs, Coroners, and other the Kings Officers, to give their attendance upon the said Justices at such a day and place, at the Sessions; and there to present such things which every Officer hath done since the last Sessions, by reason of their Officers.

Retorna Summon' Session' pacis.

Retorn. dicti brevis aliquando utitur sic, *sc.* Executio istius brevis patet in quibusdam pannel' huic brevi consut', vel annexis.

A. B. Armig' Vic.

Or thus.

Virtute istius brevis mihi directi, venire feci coram Justiciar' infra script' apud castrum Cantabr' infra specificat' die, Anno, & loco infra-content' omnes Constabularios, & Ballivos hundred. infra com. specificat. Nec non de quolibet dictarum Libertatum & Hundred. viginti quatuor Jurator' ad faciend. ea, quæ eis ex parte Domini Regis adtunc & ibidem injungentur. Ac etiam Scire feci omnibus Constabulariis & Ballivis Hundred. com. infra script', quod tunc sint ibi habentes omnia nomina Artific' laborat' & servient' husbandriæ, infra hundred. prædict', vad. contra formam statuti inde excessive capiend ac insuper sufficient' proclamari feci infra Ballivam meam quod omnes illi qui tam pro Dom. Rege, quam pro seipsis versus hujusmodi artifices, laborator' & servient' aliquas querelas juxta formam statuti ordinationis prædict' conqueri vel prosequi voluerint, quod tunc sint ibi billas suas prosequi, Justiciamq; ibidem subitur' si sibi viderint expediri, prout inferius mihi præcipitur.

A. B. Ar' Vic.

The Warrant must begin in the same form as the other for summoning of the Assizes doth Quod venire facias coram Justic. Domini Regis ad pacem in com. prædicto apud, &c. omnes Constabular' &c. according to the substance of the matter contained in the Writ; and to conclude it as the other is concluded, (vide pag. præced.)

The form of a Precept for the summoning of a special Sessions. See in Lambard, p. 599.

The Return of this last Precept, as also the Warrants which the Sheriff must make by vertue of this last Precept, must be like in form to the former, Mututis mutandis.

Aliter. *J. G.* Miles Vic. Com. ad Balliv. Hundr. de R. & *C.* salutem. Ex parte Dom. Regis tibi mando, quod non omittas propter aliquam libertat. in Balliva mea quin eam ingred. & venire fac. coram Justic. Dom. Regis ad pacem, ad prox. general. Session. pacis die Jovis, &c. sc. die, &c. pro Com. præd. tenend. has personas subscript. ad respond. præfato Dom. Regi de quibusdam transgr. & Contempt. unde impetit. & indict. existunt. Et hoc, &c. Datum sub sigillo officii mei, An. die Junii, &c.

A. B.
C. D. &c.

Tibi

Tibi etiam mando quod non omit. &c. quin eam ingred. & Capias has personas subscript. Si, &c. Et eas salvo, &c. Ita quod habeam Corpora eorum coram præfat. Justic. ad diem & locum superscript. ad respond. Dom. Regi de quibusdam transgr. & contempt. unde indict. vel impetit. existunt, &c.

D. E.
F. G. &c.

Warn also all Constables in the Hundred, as well chief Constables as others; And all Coroners and Bayliffs of Liberties to be and personally to appear before the said Justices of Peace at the time and place aforesaid, to do and perform such services as shall then and there be required of them. And warn A. B. of, &c. and C. D. of, &c. to appear upon the great Enquest, and so many Freeholders to appear upon the Inquests of Life and Death, as formerly you have done.

Ch. R. Subvic.

Or thus.

Cantabr. A. B. Armig' vic' com. prædict. ballivo Hundred. de Radfeild & Chevelye salutem; virtute brevis Domini Regis mihi directi, tibi mando quod non omittas propter aliquam libertatem in balliva mea, quin eam ingred. & venire facias coram Justic' Domini Regis ad pacem in com. prædict. conservandam, necnon ad divers. felonias, transgr. & alia malefacta in dicto comitatu perpetrata, audiendum & terminandum assignat', apud castrum Cantabr' in com. prædict', die Jovis proxime post clausum Paschæ proxim' futur': omnes constabular', &c. ut supra.

The form of the Precept of the Justice of a Forest, for the summoning of a Sessions. See in Crompton, *Authority des Courts*. 149. 150. ab.

The form of the Sheriffs Return to the former Precepts. See hic cap. 82.

The form of the Sheriffs Return for choosing the Verderors of the Forrest. See hic cap. 57.

Nota, q. le Roy ad 2. Justices in son Forrests, l'un ultra Trent, & l'auter citra Trent: Et ceux sont Justices pur les Forrests per tout Angliter. queux appent al Roy; Mes nemy in Wales. *Et serront faits per Commission le Roy south le grand Seal.* Cromp. Author. des Courts, fol. 149.

Auxi les Justices de Forrest covient doner jour per lour dits Precepts (ou briefs) serra 40. *jours inter le Teste del Precept, & le retorne de icel al meins, avant que ils tiender lour Sessions.* Cromp. fol. 150.

Auxi per Stat. 32 H. 8. cap. 35. *Justice del Forrest, Park, & Chases diens le Realm poient tener Sessions luy mesme ou per lou sufficient Deputy.* Ibidem.

Concerne le authority del dits Justices de Forrest. Vide Cromp. lib. prædict.

CAP. 48.

Retorne de Accedas ad Curiam.

NOte that if false Judgment be given in any other Court Baron, then in the Sheriffs County Court, then the Writ of false Judgment is called an *Accedas ad Curiam.* Fitz. 18. d.

But this Writ, *Quod Vicecomes accedat in Propria persona sua ad Curiam, &c. ad videndum quod plena justitia exhibeatur, &c. touts jours est fait per le demandant in le petite brief de Droit, pur ceo que il ne poiet my remover le parol pur nul cause.) Et gist quant le defendant se pleint que tort luy est fait en le petite brief de droit, ou en proces de plee, que le vic. prise ove luy* 4. *chivalers de Son Countee & voys a la Court la pur vier que droit soit fait pur le demandant.* Regist. 9. b.

And by this Writ, the Sheriff is commanded to go in person to the Court, in the Writ mentioned; and that he shall take with him four Knights of the same County; and there must require the sight of the Plea, and in full Court. The Sheriff must make a Record of the said Plea or Suit, in the presence of the said Knights, and of the Suitors of the same Court: And he must annex the Record so made, as a Schedule to the back of the Writ: And then he must retorn and certifie the same under his own seal, and the seals of four Suitors of that Court, at the day appointed in the Writ, into the Kings Court. Term. del Ley.

Accedas ad Cur. Virtute istius brevis mihi direct' in forma infrascript' accessi ad curiam infrascript' & in plena curia illa recordari feci loquelam infrascriptam: Et recordum illud (prout patet in Schedula huic brevi annex') habeo coram Justic' infrascript' ad diem & locum infra content' sub sigillo meo, & sigillis *J. B. C. D. E. F.* & *G. H.* quatuor proborum & legalium hominum de balliva mea, ex illis qui record. ill' interfuer': Et partibus infrascript' diem illum præfixi quod tunc sint ibi in loquel' illa prout justum fuerit prosecutor' prout interius mihi præcipitur. Vide Wilk. Intr. 243.

A. B. Ar' Vic.

The Stile of the Court.

Horsheath. Ad Cur' Baron. *Egidii Alington* Militis ibidem tent' vj. die Februarii Anno, &c. (*reciting le Stile del Roy.*)

Querela. *Jo. S.* queritur versus *W. W.* de placito captionis & injustæ detentionis averiorum suorum.

And note, that nothing but the Plaint shall be removed, though they be at issue. Finch. 444.

The Bayliffs Return of his Warrant to the Sheriff.

Wilk. * *Nota*, It is no Return that there are no Knights within the Hundred.

VIrtute istius præcepti mihi direct' accept' mecum *C. D. E. F. G. H.* & *I. K.* quatuor discret' Milit' * hundred. de *Ch.* prædict' accessi ad cur' *Eg. Al.* Militis, & recordari feci loquelam quæ est in eadem curia inter *J. S.* quærent. & *W. W.* def. Et record. illud parat' habeo sub sigillo meo & sigill' prædict' quatuor milit' ejusdem curiæ ex illis qui record. ill' interfuer. Et partibus prædictis eundem diem præfixi prout mihi præceptum fuit: In cujus rei testimonium tam ego *R. F.* ballivus hundred. præd. quam prædict' *C. D. E. F. G. H.* & *I. K.* quatuor legal' milit' hundred. prædict' præsentibus sigilla nostra apposuimus.

Nulla curia infrascript. *Eg. Al.* militis (unde infra fit mentio) tenta fuit post receptionem hujus brevis, & ante diem Retorn' ejusdem, per quod executio istius brevis ad præsens per me fieri non potest. *Aliter.*

But it seemeth that the Sheriff ought here to return further, that he hath required the Lord to hold his Court, &c. And that he will not. Vide Fitz. 18. c.

Aliter in Curia Baron', vel in Hundred.

Virtute brevis Dom. Regis huic scedulæ annex' (assumpt' mecum *B. C. D. E. F. G. H. I.* quatuor legales milites de dicto com. meo) in propria persona mea accessi ad talem hundred. vel ad talem cur' & in plena curia illa, sive in pleno hundred. loquelam coram Justic' infrascript' ad diem & locum interius contentum sub sigillo meo, & sigillis quatuor legalium hominum ejusdem curiæ qui recordo illi interfuerunt habeo parat' huic brevi annex' juxta tenorem ejusdem brevis: Et partibus in eodem brevi nominatis eundem diem præfixi quod tunc sint ibi in loquela illa prout justum fuerit, processur' secundum quod istud breve in se exigit & requirit, &c.

Note that this warning of the parties to be before the Justices at the day prefixed, is sufficient by the reading openly of the Writ in Court, without any other special notice given to the parties.

Virtute brevis Dom. Regis huic scedulæ annex' (assumptis mecum quatuor discret' & legal' milit' de com. *C.*) accessi ad hundred. unde in dicto brevi fit mentio, tent' apud *B.* tali die & Anno, & in plena hundred. ill. loquelam unde in dicto brevi fit mentio, recordar' volui: Et *J. S.* ballivus adtunc & ibidem in plena curia sedens (vis. & audit' brevi prædict') libros suos loquelam prædict' tangent' immediate clausit, surrexit, & festinans ab hundred. illo, una cum omnibus libris illis, & omnibus sect. ejusdem hundredi adtunc & ibidem existen' assumpsit secum, & indilatè recessit, Et præcept' dicti Dom. Regis in dicto brevi specificat' adtunc & ibidem fieri executum omnino denegavit & contradixit, & libros prædict' indilatè adtunc & ibid. à visu meo vi & armis manu fort' abstulit & rescussit, per quod executionem istius brevis ad præsens facere non possum. *Aliter.*

And note that in this Writ de Accedas ad Curiam, though the Sheriff must take with him four men of the same County, yet they need not to be Knights; but he must return this Writ under his own Seal, and the Seals of four Suitors of that Court. Plus hic cap. 60.

CAP. 49.

Admeasurement.

IN a Writ of Admeasurement of pasture (which is vicountiel) if the Writ be removed by a Pone into the Common Bank, and that the parties appear there, and agree that Admeasurement shall be made, then shall there go a Writ to the Sheriff commanding him to make Admeasurement, the which he must do by a Jury, and with them he must go in his own proper person to the common of pasture to be admeasured, as appeareth by the form of the Writ. Fitz. 162. b. But after that he and the Jury have come and seen the ground, it seemeth he may make his enquiry elsewhere; And he must return the same into the same Court by Indenture under his own seal, and the seals of the Jurors. Vide hic c. 93. & 113.

* *Et nota que in Admeasurement de pasture (Esteant remove in Banco per Pone) le def. avera jour d'appear, & s'il n'appear, donque issera le grand Distress, in quel tiel jour serra done que apres poet estre tent' deux Counties. Et in chescun de les deux Counties publique proclamation serra fait (per le vic) que le def. vener a monstre pur que Admeasurement ne serra fait. Et s'il ne veigne al distr. & le proclaim. retorne per le vic. donque Admeasurement serra fait per son default, (mes ceo serra sur auter brief agard al vic. de faire Admeasurement.* Vide Stat. Westm. 2. 7. hic c. 102. & 113. & Fitz. 125. h. (*le forme de tiel brief.*) N. bre. 72.

But if this Writ of Admeasurement of pasture be sued in the County before the Sheriff, he must first summon the parties, who may plead in the County; and if the defendant grants that Admeasurement shall be made, or pleads or shews no cause to the contrary, then the Sheriff shall give judgment that Admeasurement shall be made, and presently shall himself make Admeasurement thereof. See Fitz. Admeasur. 2. 3. & Fit. 125. h.

Nichil poet estre retorne in brief de Admeasurement de Pasture, ou Dower. Br. Ret. 101. See hic c. 67.

And note that common Append. shall be admeasured after this manner, first they must sever the common or ground; and so many beasts as the grass or hay will keep in winter, so many beasts he may put in the common or pasture in summer. Lector.

And if the Common or ground be not sufficient so that all the commoners may have sufficient to their tenements, in such case the tenements shall be admeasured, having regard to that the Common will bear, so that every tenant shall be admeasured according to the bearing of his tenement. *Et nul doit mitter plusors beasts en le common que suffist a manure son terre, &c.*

Retorne de Proclam. de Summons in brief de Admeasurement.

Ad com. meum tent. apud Castrum Cantabr. in Com. Cantabr. infrascript. 21. die, &c. Anno Regni Regis infrascript. 3. Et ad Comit. meum tent. apud Castrum Cant. in Com. C. præd. 22. die, &c. Anno supradicto.

Proclamari

Proclamari feci omnia & singula in breve prad. specificat. prout mihi interius precipitur.

The like return of Proclamation, &c. may be made (as it seemeth) in breve de Communi custodia, &c. But that there must be three Proclam. made, at three several County Courts. See hic c. 102.

44 E. 3. 11. Br. Ret. 119. In a Writ of Admeasurement of dower, the Sheriff returneth that the wife hath more then she ought to have, by forty shillings per annum, and this was holden to be no good return; for he ought to return two parts by it self, and the third part by it self, and their yearly values, and to leave to the Court to adjudge of the value. *Admeasurement de dower.*

Note that where the admeasurement of pastures, or dower, is made before the Sheriff (in his County) there the Sheriff himself is Judge, c. Fitz. Adm. 3.

In a Writ of Admeasurement of dower (which is vicountiel) if it be sued in the County before the Sheriff, all the lands which she hath in dower within the same County, shall be admeasured by the Sheriff, (sc. all the lands which she hath by the indowment of the Guardian, or by the indowment of the Heir when the Guardion bringeth the action) 7 R. 2. Stat. Adm. 3. and the overplus shall be restored to the heir. Fitz. 148. f. See hic c. 113. plus.

But in this Writ of Admeasurement of dower, if the Writ be removed out of the County Court into the Common-Bank, &c. then the Sheriff cannot make Admeasurement, but first the Sheriff must go to the lands, and then the Sheriff ought to divide, and to praise the lands by a Jury of seven men, and to set down and to return in certain, how much the two parts are worth per annum, and how much the third part is worth per annum: And when that appeareth to the Justices, it shall be admeasured according to that which the Court shall think good. Vide Br. Adm. 2. tiel matter & Fitz. 148. h.

So that notwithstanding the defendants default of appearance, the Sheriff is not to make admeasurement, but to leave that to the Court or Justices.

CAP. 50.

Retorn' de Sum' in Assize. *Assise.*

Pleg. de prosequend. { *Johan. Doo.* *Ric. Roo.*

V. Plo. 415. Infranominatus, *W. I.* nihil habet in balliva mea per quod attach. potest, nec est inventus in eadem. Fitz. Ret. 57. 7. Ass. 12.

Nihil. Infranom. *W. C.* & *J. H.* nihil habent, nec eorum alter aliquid habet in balliva mea, per quod possunt, seu eorum alter potest attachiari; Nec habent ballivum, neque ballivos, nec eorum alter habet ballivum neque ballivos, nec sunt inventi, nec eorum alter inventus est in eadem balliva mea, 7 Ass. pl. 12. Lib. Intrac. 81. *Aliter.*

Note the defendant in an Assize, may be attached by Pledges, if he be found; or if the Sheriff cannot find him, there he may attach him by his goods: And therefore it is not enough for the Sheriff to return, Nihil habet per quod potest Attachari, but there he must further return, Nec est inventus. 3 E. 3. Fitz. Retorn. 57. plus hic c. 52.

And if he be attached by Pledges, then the Sheriff may return it after this manner.

Infranominatus *W. L.* attachiatus est per Pleg. { *A. B.* / *C. D.* } 5 E. 4. Br. Ret. 93.

Also the Bayliff of the Defendants may be attached by Pledges, and the Sheriff may make his return accordingly. 28. Ass. pl. 40.

Aliter ubi est Attache per biens.

Aliter. Infranominat. *W. L.* attach. est per unam vaccam pretii. 30 s.

Or thus, Infranominati *W. L.* & *J. P.* attachiati sunt; viz *W. L.* per unum bovem pretii 20 s. Et *J. P.* per unum equum pretii 40 s.

By the Statute of Westm. 2. c. 25. in fine, the Sheriff shall not take an Ox of the Disseissee, but of the Disseisor only, and if there be many Disseisors named in one Writ, yet shall he be contented with one Ox; nor shall receive any Ox but of 5 s. 4 d. price, or the value, (quære inde) & vide Plo. 73. accordant & libr. Intr. *69*. c.

Note that if the party appear not, his Cow, (or Horse, or other goods attached) are forfeit (to the King) and the Sheriff shall be answerable for the value thereof. Libr. Intrac. fol. *69*. c. Vide hic Attachment.

Or they may be attached by pledges. Libr. Intr. 78. c. 7*9*. c.

Residuum executionis istius brevis patet in quodam pannello (or in quadam schedula) huic brevi annex.

A. B. Miles Vic.

Nomina Recogn. Assisæ, novæ disseisinæ inter *M. C.* querentem & *T. C.* tenent. *A. B. C. D. E. F. &c.* (ad numerum xxiv.)

Summon. Jurat. (sive recogn.) prædictorum— { *J. D.* / *R. F.* } 28. Ass. 40. Br. *68*. 70.
& eorum cujuslibet per se.

Manucaptor. sum. (recogn.) prædict. { *J. H.* / *R. S.* } & { *W. P.* / *J. Q.* }
& eorum utriusque.

Here the Sheriff must warn or summon the recognitors, &c. Co. L. 158. b.

In Assize, le vic. al primer jour ne retorne forsque Manucaptores summonitorum, & nomina Juratorum, &c. Mes al jour apres il retorne Manucaptores Juratorum. Vide Fitz. Ret. 28. Abr. d'Ass. 14*6*. & 37 H. *6*.

Also in an Assise the Sheriff may return Mandavi ballivo libertatis, qui nullum dedit responsum, &c. Libr. Intrac. f. 5*9*. & 7*6*.

Recogn. quid. *Nota que les recognitors del assise, sont les xii. homes que sont impannel sur le assise.* Vide Littleton 234. Co. L. 158. b.

Note that the word Recognitors, is taken for the Jury impannelled upon an assise. Min. And the summons of the Recognitors or Jurors may be made to their person in any place within the County where the land in question lieth. Or if the same be made at their dwelling houses, and thereof plain notice given to any of their family, it is sufficient.

Ret. Attach. & Ret. Nibil difference. *Assise vers* A. *& le vicount retorne, que le baily del* A. *attach. est, & ne dit que* A. non est inventus, *uncore le retorne agard bon: mes ou le vicount* Vide Plo. 73. b. & 415. 26. Ass. 33.

retorne

re torne que le defend. nihil habet, &c. *il dira plus*, quod non habet ballivos, ne eballivum, nec est inventus in eadem, &c. 26. Aff. p. 33. Br. Retorna brevium 68. Fitz. Retorn. 39.

Assise, le vicount retorne le Bayliff del Defendant attache per pledges, & ne retorne que le Defendant non est inventus, *& pur ceo que le vic' per son retorne suppose que le Bayliff ust estre attache, ideo le retorne agard bon, car in ceo est include que le party n'est trove: & ideo videtur hic que l'attachment serra per pledges*, vide 28. Aff. p.40. Br. Retorn.70. *vide plus apres tit. Attachment.*

Assise vers E. Venor, *le breve fuit retorne sic, pledges* E. V. *infranominat.* A.B. *&* C.D. *ou le retorne sera* E.V. *infranominat. attach. est per pleg.* A.B. *&* C. D.(& non ut supra) 3. *ou* 4. *Precedents fuer' monstre que le primer retorne fuit bien; mes* 40. *Precedents fuer' monstre al contrary, & pur l'auter voy, & ideo optima opinio fuit, que le retorne nest bon, pur ceo que cest parol attach. fault; car la est nul parol in le retorne que prove le brief servic per ascun attachment fait del Defendant*, 5 E. 4. Br. Ret. 93.

Pleg' de prosequend. *J. D.* & *R. R.* *Aliter.*
Infrascript' *J. S.* & *R. B.* attach. sunt, & quilibet eorum Attach. est per Pleg. *J. D. R. R.*
Residuum executionis istius brevis patet in pannello huic brevi consut'.
Nomina Recogn. in assise Nov. diss. inter *M. C.* quer. (seu petent') & *T. C.* tenent' seu defend.) in placito, &c.
A. B. C. D. E. F. &c. ad numerum xxiv. *Pannel.*
Nomina Recogn. *J. P.* & *T. W.*
Summon. (Juratorum prædict. & eorum cujuslibet) *J. D.* & *T. B.* (vel plusors.)
Manucaptor. sum. prædict. & eorum cujuslibet, *J. S.* & *J. D.* *Aliter.*
Executio istius brevis patet in quodam pannello huic brevi annex.
Nomina recognitor. in Assiss. nov. diss. inter *A. B.* quer. & *J. M.* def. *J. D. J. S. E. F. &c.* ad numerum xxiv.
Quilibet recognitor. prædict. per se separatim attachiat. est per Pleg. *J. D.* & *R. S.*
Exitus eorum cujuslibet. 5 s.
Nomina recogn. de novo apposit. juxta formam Statuti. *A. S. B. C. D. E. &c.*
Quilibet recogn. prædict. de nova apposita attachiat. est separatim per pleg. *J. D. R. R.*
Vide plus libro Intr. f. 81. b.

Retorne in brief de Annuity.

En annuity le vic. retorne le def. Nihil habet in balliva mea per quod potest attachiari, ou il serroit per quod potest summoniri, &c. Fitz. Amend. 40.

And yet the Sheriff may return, quod Attachiatus fuit, per *A. B.* & *E.* Intrac. 42. a.

The Sheriff also may make these returns, Mandavi ballivo qui nullum dedit responsum. Intr. 35. b.

Quod ipse virtute brevis præd. cepit de terr. & catal. prædict. *A.* in balliva sua ad val. 5 l &c. Intr. 57. b. plus Intr. 37. b. 39. b. 41. a.

En ceo brief le vic. poiet summon le def. per son person, sil n'ad terre ubi poiet estre summon 3. ibid. & Br. Summons 1.

The Sheriff is here to take Pledges of the Plaintiff de prosequendo. **And to summon the Defendants to appear at the day before the Justices, &c.**

CAP. 51.

Attaint. Retorn' de summons in attaint.

Pleg' de prof. { *Johan' Den.* *Richard' Fen.*

Sum. infranominat. J.N. (the def.) { *Johan. S.* *Richard. G.*

Resid. executionis istius brevis patet in quodam pannello, (or in quibusdam schedul.) huic brevi annex' (or consut.)

A. B. Ar. Vic.

Le pannel. Nomina Vigint' & quatuor milit.

Richardus M. de *N.* Ar'. *T. B.* de *A.* Ar. &c. — { Ad Numerum xxiv. **And these 24 must be Knights, Esquires or Gentlemen, having each of them 20 marks** per annum, **at the least, of Freehold. And one of them (at the least) must be a Knight.** Co. L. 156. Fitz. Attaint. 69.

Quilibet Jur. præd. per se separatim attachiat. est per pleg. *C.* & *D.* Libr. Intrac. fol. 86. c.

Sum. Jur. prædict. *H. H. S. S.*

Le petit Jury. Nomina Jur. primæ Inquisitionis In brevi huic panello annex. spec.

E. M. Gen. *H. E. Gen. &c.* { **For in an attaint, the Sheriff must return the names of all and every of the twelve that were of the first Jury: and must distrain or summon them to appear, &c. and the Process against them is,** Venire facias, & Distringas.

Pleg. prædict. Jur. primæ Inquisitionis.—— { *Thomas Pitt.* *Gulielm. Fitt.*

Pleg' de prof. { *Jo. D.* *Ri. R.*

Alitur. Sum. infranominat. *J. N.* { *J. D.* *Ri. F.*

Manucapt. sum. prædict. & utriusque eorum: *N. P. J. L. J. D. Ri. R.*

Resid. execution. istius brevis patet in quodam panello huic brevi annex.

Nomina xxiv. milit. inter *R. S.* quer. & *R. F.* defend. *A. B. C. D. E. F.* ad numerum xxiv.

Sum.

Sum. Jur prædict. & eorum cujuslibet, *J. D. K. F.*

Manucapt' sum. prædict' & eorum utriusque, *J. P. R. C. F. D. E. G.*

Nomina Jur' primæ Inquisitionis unde in brevi huic schedulæ annexo fit mentio, *J. B. D. C.* ad numerum 12.

Sum. Juratorum primæ inquisitionis & eorum cujuslibet, *J. D. R. R.*

In an attaint the Sheriff may make these Retorns.

Quod ad distr. in militem, & alios, &c. breve tarde deliberat. fuit. Intr. 85. b.

Sur summ. del petit Jury, Quod quilibet eorum per se separatim per se attach. sit per Pleg. Intr. 86. or quod distr. sunt, viz. quilibet eorum per catalla ad valeur, &c. Intr. 86. b.

Quod breve præd. in omnibus servit. & execut. Intr. 90.

Nichil, vers ascun des Jurors, & que l'auters sont distr. Intr. 92.

Mandavi ballivo libertat. &c. 93. f. Retorns tales 5. Et quod non sint plures 94.

Manucapt' summonit' prædictorum, & utriusque eorum *J. L. H. P. R. S. T. V.*

Maincaptors or Mainpernors need not to have any Addition, but their names of Baptism and sirname sufficeth.

Et uncore exigent gist vers Manucaptors ou Mainpernors, & ils serront utlage pur le Non apparance del party pur que ils imprist. 10 E. 4. Exigit 49. Ideo quære.

18 H. 8. 5. Br. 1. **In an attaint the Sheriff upon the Distress cannot return that the Defendant is dead; for there are no words in the Writ to command the Sheriff to warn the Defendant.**

46 E. 3. 18. Br. 22. **In an attaint the Sheriff returned that he had summoned the Jury as in an Assise; and for that no Mainprise of the Summoners and Pledges was indorsed, &c. therefore a Summons,** sicut alias, **was awarded.** Fitz. Retor. 72. **Yet see** lib. Intr. fol. 86. **No Manucaptors were returned.**

48 E. 3. 15. Br. 115. **In an attaint, the Writ is,** diligenter inquir' qui fuer' Juratores primæ Inquisitionis; **and therefore if the Sheriff shall happen to return eleven of the first Jury, and another which was none of them, yet he shall not be amerced; for he may mistake some in his inquiry of them: but in such case at the surmise of the party, Process shall go out against the twelfth;** quoad nota.

In attaint the Sheriff may	**Summon the Defendant in** terra petita. Br. Summons, 2. 18, 20.
	Return the Def. Nihil. Br. Summons 2. 18, 20. & Attaint 34.

In an Attaint the Sheriff returned a certain number of Jurors, but not to the full number; and averred in his return, that there were no more within his Bayliwick which might spend 20 l. per annum: **See** Kellw. 97.

The Grand Jury are to be warned the first day. Finch. 485.

And the Petty Jury must be all present when the Grand Jury is taken. Ibidem.

And in an Attaint the Sheriff must summon the Tenant to be at the Recognition or Trial. Fitz. 108. 1.

CAP. 52

Attachment.

Attachment. Pleg' infranom. *J. D.* { *P. R.* / *J. W.* } This seems to be no good Return; for that the word Attach. is wanting. 5 E. 4. Br. Retor. 93.

But the Return ought to be after this manner:

Infranominatus *J. D.* Attachiatus est per Pleg. { *P. R.* & *J. W.* }

Or upon the Attachment, the Sheriff may Return the Defendant attached by his goods, as followeth.

J. D. infranominatus Attach. est per unam Patellam precii 10 d. vel per unam vaccam precii 30 s.

Also if the Sheriff shall make Garnishment, or but give warning to the Defendant, or Tenant, to appear and answer, &c. it seemeth to be good. Br. Attach. 9.

But in all cases where the Sheriff shall return Nihil habet in balliva mea per quod potest Attachiari, ou Summoniri, it seemeth there also the Sheriff ought to return further, Nec est inventus in eadem: Or thus, Ideo Manucaptus est, or Attachiatus est per Plegios, &c. Fitz. Retor. 57.

Infranom. *J. D.* nihil habet in balliva mea per quod Attachiari potest: Nec est inventus in eadem. Nihil.

Aliter, Infranominati, *A. B.* & *J. D.* attachiati sunt, & uterque eorum per se attachiatus est, videlicet dict. *A. B.* per unum equum precii 10 s. & prædict. *J. D.* per unum bovem, pretii 30 s.

And wheresoever the Writ is Pone per vadios & salvos Plegios, the Sheriff may Attach the Defendant by Pledges (or Sureties) or may Attach him by his goods. Fitz. Retor. 57.

But where the Process is to Attach a Clerk, there the Sheriff must Summon him by his person, or else by his Land (if he hath any Lay Fee) but he may not Attach him by his goods. 32 H. 6. Fitz. Retor. 23. & Finch. 135.

Note where the Sheriff attacheth one by goods, he ought to return the certainty of the goods, and also the value of the goods (and it is not sufficient for the Sheriff to return that the party is attached by goods to such a value, but must shew what the goods be in Specie) the reason is for that if the defendant appeareth not, then the goods attached be forfeit to the King, and except the Sheriff in his return expresseth the goods attached certainly and in Specie, they of the Exchequer cannot make out their Estreats for the same. Vide Dyer 199. Plo. 54.

Also where the attachment is made of a living thing (or things) it must be pretii, and so of a dead thing in the singular number; but if it be of dead things in the plural number, then it must be ad valentiam, and not pretii.

Attachment sur Appel.

Non est inventus, is a good return in an attachment sur appel de mort, ou de Robbery.

J. F. quæ fuit uxor *D. F.* infranom. non invenit mihi pleg' de prosequend. Ideo ad executionem istius brevis nihil per me actum est. *Plegii de prosequend.*

Retorne sur attachment, Manucaptus est per, &c. Intr. 84.

Now the form of every Original Writ is in this manner, Si *A.* fecerit te securum de clamore suo prosequendo, &c. whereby the Sheriff is commanded, that if the Plaintiff finds him Pledges, (sc. any men to be his Sureties) that he will prosecute the Suit, then to execute the Proces (as in the Writ is mentioned) against the Defendant, to be before the Judges at a certain day, to answer thereto, &c. Finch. 53.

And therefore the Sheriff must take such Pledges of the Plaintiff, and must return them; and if the Plaintiff will not find Pledges, the Sheriff may return, quod nihil fecit, quia petens non invenit sibi plegios, &c. 1 E. 3. Fitz. Pledges 14.

Also in every Writ, which hath therein this clause expressed (sc. si *A.* fecerit te securum de clamore suo prosequend.) the Sheriff may delay the Plaintiff by making this Return following; Infranominatus *A. B.* non invenit mihi pleg' de prosequendo istud breve. Ideo ad executionem ejusdem nihil per me actum est: or he may execute the Writ, without any Pledges, &c.

Note also that the Sheriff is not to return the names of any as Pledges (either for the Plaintiff, or Defendant) except they consent and agree thereto: Stat. 27 E. 1. c. 2. and if he do, shall be grievously punished: and yet for the Plaintiff the Sheriff returneth two common Pledges; or at least the entry is so. Finch. 53.

Co. 8. 61. Fitz. 195. b. Also note that the King, nor Queen (in regard of their dignity and prerogative;) neither Infants shall find any Pledges de prosequendo, &c. Fitz. 31. f. Br. Pledges 29.

Also in a Quid juris clamat, Scire fac. or per quæ servitia, the Plaintiff shall find no Pledges, Co. 8. 61, Fitz. Pledges 1.

Note that the Sheriff must take Pledges of the Plaintiff for the pursuing of his suit; otherwise the plaintiff in many cases may be nonsuit without danger: and the Sheriff for not taking Pledges shall be amerced. Fitz. Pledges 1. & 7. But though there be no Pledges returned, yet the Writ being served, it is well enough: Fitz. Pledges 10. For the returning of Pledges seemeth to be but matter of form; and the plaintiff may find Pledges at any time, hanging the Writ. 18 E. 4. Br. Pledges 21.

These Pledges de prosequendo may be found in the Chancery, and how, and by whom, vide the Register, fol. 228. & Finch. 53.

Les Pledges de prosequendo, si ne sont troves al vic', ou in le Chancery devant, poient estre trove in le Court, ou le brief est retorne. Finch. fol. 53. *Ou poient estre trove al Assises al vic.* Fitz. Pledges 7.

Et coment que ceo soit forsque matter de forme, uncore si le plt. ne trove Pledges al primes, ne al darein, quære si ceo ne soit error.

Et per ascuns le def. ne poiet appear, nec nest compel d'appear, devant que le plt. ad trove Pledges, 22 H. 6. Br. Pledges 32.

Note that where a Writ cometh to the Sheriff, which ought to be served by the Bayliff of a Franchise or Liberty, the Sheriff ought first to take Pledges (of the plaintiff) de prosequendo, before he writes (or makes his precept) to the Bayliff to serve the Writ; and then

(after Pledges so taken by the Sheriff, and his precept directed to the Bayliff) all the further execution of the Writ doth appertain unto the Bayliff: And the Sheriff may return the Pledges, and the Bayliff may return all the rest. 22. Aff. pl. 3. Br. Pledges 15. & 21 H.7. fol.14. Quære concerning the return by precepts.

But if the Bailiff of the Liberty shall take the Pledges de prosequendo, the Sheriff shall be therefore amerced, &c. And therefore the Sheriff needs not make any precept to the Bayliff of the Liberty, to execute the Writ, until the plaintiff hath first found sureties before the Sheriff himself. 14 H. 6. Fitz Amerc. 2. Br. Ret. 61.

And yet by some opinions, the Bayliff may take Pledges de prosequendo, well enough. 22. Aff pl. 3.

CAP. 53.

Retorn de Capias, Alias, & Pluries.

Capias in debito.

INfranomitatus *A. B.* non est inventus in balliva mea. Alit.

Infranominati *A. B.* & *C. D.* nec eorum alter, inventus est in balliva mea.

And if the Sheriff shall return it thus, Infranom. *A. B.* & *C. D.* non sunt inventi in balliva mea, it is good enough, without saying, Nec eorum alter, or quod nullus eorum est inventus; for that shall be implied.

If there be three or more then thus: Infranominatus *A. B.* & cæteri defend' infranominati non sunt inventi in balliva mea. Alit.

These Writs may be returned in divers manners, as followeth; First if the Sheriff will * not, or cannot serve or execute the Writ, then thus, A. B. infrascr' non est inventus in balliva mea post receptionem istius brevis, vel, post advent' hujus brevis.

Nihil retorne sur le Capias. Vide 8 R. 2. Fitz. Proces 224. & libro Intrac. fol. 109. d.

But the Sheriff may not return, quod defendens non est inventus in balliva, or non fuit infra ballivam suam, post, &c. prout ei aliqua via (vel modo) constare poterit: But he must return Non est inventus generally and directly. 9 H. 6. Fitz. Ret. 9.

* *Quære* how it can stand with their oath not to serve it, or not to endeavour it to their best power, &c.

And if the party be taken, then thus:

Virtute istius brevis cepi *J. W.* infrascriptum, cujus corpus coram Justic' infrascript' ad diem & locum interius content. habeo parat. prout breve illud exigit & requir. &c. vide lib. Intr. 109. c.

Infrascript. *J. W.* captus est per corpus suum, cujus corpus ad diem,&c. habeo paratum prout interius mihi præcipitur, vel sic secund' exigent' hujus brevis. Aliter.

Virtute istius brevis mihi direct cepi corpus infranominati *J. S.* cujus quidem corpus coram Justiciar. infrascript. ad diem & locum infracontent. parat' habeo, prout interius mihi præcept. fuit; vel prout istud breve in se exigit & requirit. Aliter.

Infrascript. *Jo. S.* captus est per corpus suum, cujus corpus ad diem & locum infracontent. paratum habeo prout, &c. Aliter.

R. S. Infranominatus non est inventus in balliva mea, & quoad capiend' *J. F.* Aliter ball, libert.

J.F. infranominat' mandavi *R. S.* ballivo libertat' de *S.* qui plenum return. habet omnium brevium & execut' eorund' cui executio istius brevis totaliter pertinet faciend', extra quam libertat' nulla executio istius brevis inde per me fieri potest; qui quidem ballivus mihi sic respondit quod cepit corpus præd. *J. F.* cujus corpus prædict. *R. S.* coram Justiciar. Domini Regis infrascript' ad diem & locum infracontent. paratum habebit; vel sic, qui quidem ballivus null' mihi dedit responsum. Vide liber Intr. 109. c. d.

But note that wheresoever the Sheriff returneth Cepi Corpus, if the Sheriff shall not have the prisoner so as he appeareth at the day, the Sheriff shall be amerced, 11 R. 2. Fitz. Respond. 14. & hic c. 37.

Where there be two or more of one name, how the Sheriff may safely make return. See hic c. 61.

J. D. infranominat. fugit ad libertat' *J.E.* Armig' & continuè ibidem moratus fuit ideo ut ipsum capere non possum; this is a good return; and yet if the King be a party, the Sheriff is to enter the Liberty, and to execute the Proces, &c.

Ante adventum istius brevis mihi directi, *J.S.* infranominat' intravit Sanctuarium sancti *Petri* Westm. in com. Midd. & in eadem adhuc moratur, per quod corpus prædict. *J. S.* coram Justic' infrascript' ad diem & locum interius specificat' habere non possum, prout, &c. But note now by the Stat. 1 Jacobi c. 25. that so much of all Statutes as concern Sanctuaries made before Anno 35 Eliz. be repealed. *Sanctuarium.*

Virtute, &c. cepi corpus *A. B.* infranominati, & ipsum ad gaolam Domini Regis castri sui de *C.* commisi, ibidem salvo custodiendum, &c. Quem postea prætextu cujusdam alterius brevis dicti Domini Regis mihi direct', & huic brevi annex' à prisona illa deliberari feci. *Aliter.*

Virtute, &c. cepi corpus. *A. B.* infranom', &c. Et ipsum ad gaolam, &c. *Aliter.*

Posteaq; viz. tali die & anno, prætextu cujusdam alterius brevis dicti Domini Regis mihi directi, cujus transcript' vobis mitto huic brevi annex' prædictum *A. B.* à prisona illa deliberari feci; Et ideo corpus prædict' *A. B.* coram Justic' infrascript' ad diem & locum infra content' habere non possum, prout interius mihi præcipitur.

Virtute, &c. cepi corpus *J. C.* infranominat' cujus corpus coram Domino Rege ubicunque tunc fuerit in Anglia, ad diem & locum infracontent' parat' habeo, prout interius mihi præcipitur.

Et si le defendant que est issint prise, soit malad' en prison: ou si le vicount ne voit faire ascuns expens. Ou custag' pur luy amesner al Westm. *devant les Justic' solonque le purport del brief*, tunc sic;

Virtute istius brevis *A. B.* infrascript' captus est per corpus suum, & in tali prisona sive gaola adeo languidus detentus, quod corpus ejus ad diem & locum interius content' habere non possum absque mortis periculo. *Languidus.*

Virtute istius brevis mihi directi cepi corpus infranominati *J. S.* qui quidem *J.* est in prisona Domini Regis de *C.* adeo languidus, quod ob metum mortis ipsum coram Justic' infrascriptis ad diem & locum infra content' habere non possum, prout interius mihi præcipitur. *Aliter.*

Qui quidem *J.* tantis vexat' infirmitatibus, quod ipsum sine magno mortis periculo propter corporis sui debilitatem coram Justic' infrascriptis, ad diem & locum infracontent' habere non possum, prout interius, &c. *Aliter.*

E. D. infranominat' captus fuit per *J. C.* constabularium villæ de *D.* apud *T.* in com. *D.* pro suspectione felon', & ea de causa in gaola præ- *Aliter pro felonia.*

dict' sub custodia mea detentus fuit, & in eadem gaola adeo languidus est, quod nullo modo laborare sive carriari potest: Vel sic, cujus corpus paratum habeo coram vobis ad diem,&c. infracontent', ad faciend' quod illud breve in se exigit & requirit.

Aliter. Quod ante adventum brevis istius præd. *R. D.* captus fuit, &c. Et in prisona, &c. detent', virtute cujusdam querelæ versus ipsum per nomen *R. D. &c.* in placito Debiti super demand. 20 l. in curia,&c. ad sectam *J. G.* levat. &c. Liber Intrac.

Que il est in prison per Capias ad satisfac. in det.

Que il est in prison per Condempnation, in placito debiti, &c.

Quod ante adventum istius brevis, le def. fuit commissus per duos de consilio Regis, &c. Corpus tamen ejus coram Justic. infrascript. ad diem parat. habeo. Fitz. Attur. 14.

Vide plus pur tiel retorne. Libro Intrac. f. 109. c. d.

Supersed. sur Capias. Virtute istius brevis vobis certifico quod postquam istud breve mihi liberat' fuit ad capiend. *R. T.* & alios defendentes in isto brevi specificat', idem *R.* & alii infranominati protulerunt mihi breve Domini Regis de supersed. quod huic brevi est consut. virtute cujus supersed. omnino

Infranominatus *R. T.* deliberavit mihi breve Domini Regis de supersed. quod quidem breve huic brevi est annex. Ideo ulterius ad executionem istius, Nihil per me actum est.

These two last seem to be good Returns, if the Supersedeas **be delivered to the Sheriff (or Officer) before the party be arrested, &c. But if he be arrested or taken upon the** Capias, **and after he delivers a** Supersed. **of an older date to the Sheriff, now the Sheriff may not deliver him; for it was his fault not to deliver the** Supersed. **before he was arrested.** 19 H. 6. 43. **And now upon the return of the Sheriff he shall be delivered by the Court.** Cromp. 145. vide Fitz. Ret. 16.

Supersed. post cepi corpus. Virtute istius brevis mihi directi Cepi corpus infranominati *E. C.* qui postea protulit mihi breve Domini Regis de Supersed. mihi directi, & huic brevi consut'; Ideo corpus suum coram Justic' infrascript. ad diem & locum infracontent' habere non possum prout interius mihi præcipitur.

And yet this last seems to be no good return, for that the party is still adjudged a prisoner, for that he was once taken, and therefore the Sheriff was to be amerced for such a return. Vide Fitz. Ret. 16.

But these Writs (of Capias, &c.**) are seldom or never used to be returned by Sheriffs; for Attornies do use to return them themselves; but that must be done with the leave and sufferance or consent of the Sheriffs, otherwise the Attornies cannot justifie the setting of the Sheriffs name to their Writs.**

Tarde, **Upon a** Capias *de Appel de mort*, **the Sheriff returneth** quod breve adeo tarde sibi venit quod illud exequi non potuit propter brevitatem temporis, **and it was holden to be a good return.** 8 H. 4. 21. Br. 34.

But upon a Capias (ad respond, &c.) **Tarde is no good return, for the manifold mischiefs which may follow thereon; and therefore in such cases the Sheriff shall be amerced if he returns a Tarde.** 2 H. 4. & 21 H. 6. Fitz. Ret. 37. 42.

Mortuus. **Upon a** Capias **the Sheriff returneth that the party is dead;** quære if **this be a good return.** Br. 125.

But in a Præcipe quod reddat, **as also in a** Scire facias, **and upon a** Corpus cum causa, **it is a good return that the tenant or party is dead.** Br. Ret. 125.

If the Sheriff returns that the party is dead in prison, he must further

ther

ther shew that the Coroner had the view of the body, &c. 3 H. 5. Fitz. Ret. 107.

7 H. 4. 11. Br. 107. Upon a Capias the Sheriff returned quod cepi corpus, and yet hath not the body in Court at the day of the return, he shall be amerced: and if it were upon a Capias ad satisfaciendum, the Plaintiff may have his action against the Sheriff for the debt, as upon an escape; for by such return the Sheriff hath concluded himself.

Br. 100. 102. 20 E. 4 3 H 6. 3. 18 H. 8. 1. Upon the Capias the Sheriff returneth cepi corpus, & quod est languidus in prisona; this is a good return, if it be true that the party is sick indeed; and yet upon such a return quod languidus est in prisona, a Duces tecum may be awarded to the Sheriff to bring in the prisoner, or else the defendant if he will appear, shall be received so to do. Vide libr. Intrac. fol. 400. d. Languidus.

11 H. 6. Br. 223 The Sheriff upon a Capias returned Mandavi ballivo, & quod ipse cepit corpus, sed illud hic habere non potest quia languidus est, &c. And the Court being informed that he was not sick, a Writ was directed to the Bayliff to return the body, and to appear; and upon examination it was found that the party was not sick, whereupon the Bayliff was fined, and committed to the Fleet.

And our books seem to vary in this point, some allowing the Sheriffs Return, quod cepi corpus, sed non possum habere pur malady. Vide 22 E. 3. Fitz. Ret. 94. But 31 E. 3. Fitz. Ret. 85. the Sheriff for the like return, was amerced.

Upon a Capias the Sheriff returned that the Defendant was so sick, that he could not take or carry him out of his house for danger of death, and it was adjudged a good return. Fitz. Ret. 105. & 122.

The Sheriff being commanded to have the body at a day, returned quod languidus est, and the return was holden to be nought, and the Sheriff was amerced. 41 E. 3. Fitz. Ret. 71.

And yet the Sheriff may keep the body after the day of the Return, for he is chargeable to bring him in by his own return.

CAP. 54.

Retorn. de Capias ad satisfac.

Virtute istius brevis mihi direct cepi corpus infranominat' *A. B.* cujus quidem corpus, coram Justic. infrascript. (vel coram Domino Rege) ad diem & locum infracontent' parat. habeo ad satisfaciend. infranominat. *C. D.* de debito & damnis infraspecificat. prout interius mihi præcipitur. *Capias ad satisfac.*

Virtute istius brevis mihi directi cepi corpus infranominati *A. B.* cujus corpus ad diem & locum infracontenta paratum habeo. Plo. 441. *Aliter.*

A. B. Ar' Vic.

Upon the Capias ad satisfac. if the execution be duly done by the Sheriff, and that the Plaintiff hath his demand, though the Sheriff returneth not this Writ, it is no danger to him. See hic c. 38.

Upon a Capias ad satisfac. non est inventus, is a good return, Libr. Intr. fol. 109. d.

And so is Nihil ibidem.

But let the Sheriff take heed, if herein he return cepi corpus, that he hath the body in Court at the day; otherwise he is chargeable for the whole debt, by reason it is an escape, &c. See Br. Ret. 107.

If a Writ of execution shall come to the Sheriff against a prisoner (in the Gaol) who is attainted of Felony, here the Sheriff may return that the prisoner is attainted, and that therefore he cannot take him in execution: but if the Sheriff shall serve the execution upon such a prisoner, and after the prisoner getteth his pardon for the Felony, yet if the Sheriff shall suffer his prisoner to go at large, the Plaintiff at whose suit the execution was, may bring his action of debt upon the escape against the Sheriff, and shall recover; for although by the attainder the execution were suspended, yet by the pardon it was revived: it was the case of one Croft a prisoner in Newgate. Anno.

Lassels *fuit prise in execution sur Capias ad satisfac. hors del Bank le Roy, & de leschequer issist brief de Prærog. de Habeas Corpus, teste jour devant l'arrest, & retorne devant le Capias, per que le vic. amesne le corps in l'eschequer, & la monstre le causé del detainer, d'estre d'aver le corps al jour del retorne, &c. Et illonque le prisoner fuit commit al Fleet in execution pur le dit det, & auxi pur det le Roine que il la confess in Court; Puis Habeas Corpus vient del Bank le Roy al jour, &c. Et Gardian amesne le corps, & monstre tout le matter en son retorne, ideo le prisoner fuit remande, &c.* Dyer 179.

Sur Attachment de Priviledg' in trespaß per Rythe *(un Attorney del Bank) versus* Kemp, *retornable a certain jour, & le def. fuit apres condempne in auter Breif de Priviledge, & Capias ad Satisfac. issist retorne apres le dit primer: Et al jour del primier retorne, le vic. port le party, & retorne ambideux les Brief. Mes dit que son entent ne fuit de retorne le execution devant le jour (specialment fesant mention del primer matter de retorne,) Et hoc fuit fait bon, & politic, pur luy saver indempnes d'escape, &c. Et al preyer del Plaintiff le vic. fuit discharge, & le Def. commit in Execution al Fleet.* Dyer 192.

Capias utlagat', Plus hic exigent.

Virtute, &c. cepi corpus *A. B.* infranominat' cujus corpus coram Justic' infrascript' ad diem & locum infracontent' parat' habeo prout interius mihi præcipitur; residuum vero exec' illius brevis patet in quadam inquisitione huic brevi annex'.

Sur Capias utlagatum, Non est inventus, is a good Return, thus; Infranom': *J. S.* Non est inventus in balliva mea:

Residuum execut. illius brevis patet in quadam Inquisit. huic brevi annex.

Inquisitio Indentat. capt. apud, &c. Qui dicunt super Sacram. suum quod *J. S.* in dicto breve nominat. nulla bona neq; Catalla, terr. sive Tenementa habuit aut tenuit in Com. præd. die Jovis prox. post festum Sancti B. An. Regni Dom. Regis nunc 3. in dicto Br. specificat. Nec unquam postea; quæ in manus dicti Dom. Regis capi ac seisiri possunt, ad noticiam Jurator. prædict. In cujus rei testimonium, tam sigillum vicecom. præd. quam sigilla Jurator. præd. huic inquisitioni Indent. sunt appensa. Datum die, An. & loco, supradict.

This enquiry must be, what Lands, Goods, or Chattels the party Outlawed had, the day of the Outlary, or at any time after.

And upon the Capias Utlagatum, if the party be found, the Sheriff shall take and put him in prison, without Bail or Mainprise, for that he had the Law in contempt, hic cap. 96.

Also

Also upon the Capias Utlagatum, the Sheriff may seize and keep his goods, &c. hic cap. 15. See plus hic cap. 15.

Also upon the Capias Utlag. against an Infant of the age of fourteen years, the Sheriff may imprison him, and may seize his goods as forfeit, as it seemeth, Country Just. cap. 77. & Co. l. 128.

Bracton, lib. 3. fol. 125. b. num. 5. saith, Minor qui infra ætatem vii. annorum fuerit, utlagari non potest, nec extra legem poni: quia ante talem ætatem non est sub lege aliqua, nec in Decima; Non magis quam fœmina, quæ utlagari non potest, quia ipsa non est sub lege, sc. in Franco plegio sive Decima, sicut masculus duodecim Annorum & ulterius, &c Minsh. Sed forma sic fieri potest.

Upon a Capias Utlagatum, when the Sheriff maketh his warrant to his Under-sheriff or Bayliff, &c. for the taking of the party Defendant it were good for him also to take Bond of his Under-sheriff, or Bayliff, with condition to bring the Defendant to prison, if he be arrested or taken; and this would make good execution of this proces: whereas now the Under-sheriffs and Bayliffs, if they have taken a man upon a Capias Utlagatum, they will take money of both parties, (first of the Plaintiff to take the Defendant, and after of the Defendant to let him go again being taken, pretending that it is to reverse the Utlary which they have nothing to do withall) the Defendant being taken thereupon, ought presently to be put in prison, and there to remain until some Attorney hath reversed the Utlary for him; whereas no Under-sheriff, nor Sheriffs Bayliff, ought to practise as an Attorney for the time they are in that Office. Wilk. & hic postea, cap. 117.

Auter Retorns sur Capias Utlagat. ou Exigent.

Nihil, est bon Retorn (sur Capias Utlagat.) lib. Intrac. 109. b.

Que les Coroners sunt absent al Comit. Ideo, &c. Intr. 334. b. 336.

Que nul Coroner fuit la forsque un que refuse de pronouncer le utlar. 335.

Que ne fuerunt plusors Countees. 335.

Quarto Exactus, & non habuit tempus plus. 335.

Supersedeas pur un; & vers l'auter. 4. *exactus, & non sunt plusors, Com.* 336.

Supersed. pur lun, & utlary vers l'auter. 336.

Multis modis potest dici captus & detentus, sc. pro debito x l. versus ipsum recuperatum in tali curia.

Vel captus est per præceptum Dom. Regis.

Vel captus est super Recogn. fact' in Cancellar.

Vel captus est super appel' pro morte hominis.

Vel de roberia, &c.

Infrascriptus R. V. captus fuit apud D. decimo die Maii anno infra scripto, per T. P. ballivum Domini Regis, & mei, virtute cujusdam warranti, prætextu hujus brevis per me facti, & sibi direct': Et super hoc prædict' R. V. cum aliis ignotis vi & armis, viz. baculis, &c. in dictum ballivum insultum fecerunt, & seipsum à custodia prædict. ballivi recuss. & nunquam postea eundem. R. V. in balliva mea invenire potui. *Rescous.* *Aliter.*

Executio istius brevis patet in quadam scedula huic brevi annex'.

Virtute brevis Domini Regis mihi directi, & huic scedulæ annex', feci quoddam warrant' meum cuidam J. M. ballivo meo itinerant', ad capiend' & arrestand' E. G. in dicto brevi nominat' secundum exigen. ejusd. brevis, Qui quidem ball. meus virtut' warrant' mei præd. nono die J. anno Regni Dom. *Jacobi* Regis infrascript' xx. apud D. in com. præd. *Scedula.*

cepit

cepit & arrest' corpus præd.E.G.Et adtunc & ibidem ipsa E. G. in custodia sua fuit (or habuit) super quo F.G. de D. prædict. in comitatu præd. gener. & T. M. de eisdem villa & com. gen. adtunc & ibidem vi & armis, &c. in præd. ballivum meum insultum fecerunt, & ipsum ball. meum adtunc & ibidem contra legem & consuetud. Regni dicti Domini Regis Angliæ, & contra voluntat. ipsius ballivi mei imprisonaver. & ipsum ballivum meum in prisona ibidem per spacium unius horæ adtunc detinuer. & viginti denarios in pecuniis numeratis, de bonis, catallis, & denar. ipsius ballivi mei adtunc & ibidem præd' T. M. cepit, ac præf. E. vi & armis præd. adtunc & ibidem à custodia dicti ballivi mei ceper. & recusser: Necnon eadem E. seipsam adtunc & ibidem à custodia ejusdem ballivi mei recussit contra voluntat. dicti ballivi mei, & contra pacem dicti Dom. Regis nunc, &c. Et postea eadem. E. non fuit inventa in ball. mea. *Vide liber Intrac. f.* 579.

Rescous. Virtute istius brevis mihi directi feci quoddam warrant' cuidam R. P. ballivo meo hac vice itineranti, ad capiend. & arrestand. infranom. T.L. secundum exigentiam istius brevis; qui quidem R. P. virtute warrant' prædict' postea, scilicet secundo die Maii anno Regni Domini Regis infrascript' vicesimo, apud B. in comitatu prædicto cepit corpus infranom. T. L. de B. præd. in dicto comitatu Cantabr. Qui quidem T. die, anno, & loco supradict', vi & armis in præf. R. P. ball. meum prædict. insult' fecit, & ipsum verberavit, vulneravit, & maletractavit, ita quod de vita ejus desperabatur. Et idem T. adtunc & ibidem à custodia præd. ballivi mei, & contra voluntatem suam recessit, escapiavit, & recussum fecit contra pacem dicti Dom Regis nunc, &c. Et postea idem T. L. non est inventus in ball. mea. Aliter.

Virtute istius brevis feci quoddam warrant' meum W. H. ballivo hundred. de H. qui mihi sic respondit, quod ubi ipse virtute warrant' præd. decimo die S. anno Regni Dom. Regis infrascript' vicesimo apud C. cepit quendam J. S. & ipsum usque in castrum Dom. Regis de C. ducere voluisset, ibidem salvo custodiend' quodque illuc vener. quid. J. T. & R.S. cum pluribus aliis ignot' vi & armis arraiat' modo guerrino, & à custodia dicti ballivi mei apud præd. W. præd. J. S. ceper. & abduxer. Et sic ob metu mortis suæ ipsam J. S. evadere permisit, Et ea de causa corpus J. S. præd. coram Dom. Rege ad diem & locum infracontent', ubicunq; &c. habere non possum, prout interius mihi præcipitur. Et ulterius vobis certifico, quod post præd. decimum diem, &c. prædict. J. S. non fuit invent' in balliva mea. Aliter, per ball' Hundr.

Virtute istius brevis mandavi J. S. ballivo meo libertat' de D. in com. præd' (qui habet plenum retorn. omnium brevium, præcept' & warrant' sibi inde direct.) Qui quidem J. S. tali die & anno apud P. in comitatu præd' T. S. in brevi huic scedulæ annex' nominat', & virtute ejusdem warrant. sibi direct. cepit & arrestavit, & ipsum T. S. in custodia sua occasione prædict. adtunc & ibidem habuit & tenuit, ac quidam *Johan. C.* nuper de S. in comit. prædict. L. (aggregat. eis quam plur. aliis malefactor. ignotis, pacisq; Domini Regis peturbator.) ad numerum viginti personar. modo guerrin. arraiat. vi & armis, viz. glad' pugionibus, scut. & bac. in ipsum ballivum meum adtunc & ibidem riotose insultum fecerunt & ipsum verberaver' vulneraver. & maletractaver. ita quod de vita ejus desperabat. & prædict. J. C. & alii, &c. ipsum T. S. extra custod. dicti ballivi mei adtunc & ibid. ceperunt & recusser. & ad sui juris ad largum ire permiser. ac idem T. S. seipsum extra custod. dicti ballivi adtunc & ibidem similiter recussit, contra pacem dicti Dom. Regis, &c. Et postea idem T. non est inventus in balliva mea. Aliter de Rescuss. & Riot.

Ego J.H. miles vic' virtute istius brevis feci quoddam warrant' J.B. & Aliter.

P. D.

P. D. ball' meis hac vice itinerantibus ad arrestand' & capiend' R. F. ad satisfaciend' infranominat' W.P. de debit. & dampn. infra specificat. prout interius mihi præcipit. virtute cujus warranti J. B. & P. D. ball' tali die & anno apud H. in com. præd. arrestaver. prædict. R. F. prout per warrant. illud eis præcipiebatur, ac idem R. F. ac quidem G. F. de G. in com. prædict. cum aliis ignotis vi & armis, videlicet gladiis baculis, &c. in prædictos J. B. & P. D. eisdem die & anno apud H. in com. prædict' insultum fecer. & ipsos male tractaver', & ad tunc & ibidem rescussum fecer. virtute cujus rescuss. idem R. F. a custod' illa ad tunc & ibidem contra arrestationem supradictam recessit, evasit & escapiavit; quapropter præd. R. F. ad diem & locum infranomin. habere non possum; & ulterius vobis certifico, quod post eundem diem prædict. R. F. non fuit inventus in balliva mea.

Virtute istius brevis quoddam warrant' meum feci & direxi cuidam T. C. ballivo meo ad attachiand' infranomin. J. C. prætextu cujus idem T. C. nono die J. ann. Regni Domini Regis infrascript' vicesimo apud B. in com. infrascr. cepit & arrestavit præd. J. C. eum coram me ducere volens & intendens, ad faciend' & recipiend', prout in isto brevi mihi præcipitur; Et postea videlicet dicto nono die J. ann. vicesimo supradicto, prædictus J. C. apud B. præd' in com. præd' in præd. T. C. ballivum meum insultum fecit, Et ab eodem ballivo adtunc & ibidem fugit, evasit & recussum fecit, Et postea eundem J. C. in balliva mea invenire non potui. *Aliter.*

But for these former Returns of a Rescous (by some opinions) it seems they are not good, and that the Sheriff shall be amerced for such Returns; for the Sheriff is to bring the party at his peril, if it be in time of Peace: And he might have taken Posse Comitatus, to have aided him therein; And besides, the Sheriff may have his Writ of Rescous against the Offendors, and shall recover so much as he was amerced. Vide 16 E. 3. Fitz. Retorn. 110. & hic cap. 30.

And yet where the Sheriff shall return that the party hath been Rescued, &c. per ignotos, it seemeth the Return is good; for then it doth not appear that he can have any Writ of Rescous: Fitz. Ret. 110.

Capias Excommunicatum.

The Sheriff (or other Officer) to whom such Writ of Excommunicat. Capiend.) or other process shall be directed, needs not bring the body into the Kings Bench at the day of the Return; but shall only return the Writ thither, with Declaration briefly in what manner he hath served and executed the same. Stat. 5 Eliz. 23.

If the Sheriff, &c. shall return Non est inventus, then a Capias shall be awarded with a Proclamation therein, commanding the Sheriff, &c. in the full County Court, or at the Assizes, or Quarter Sessions, to make open Proclamation, ten days at least before the Return thereof, that the party yield his body to prison within six days: And after the six days, the Sheriff, &c. shall make return what he hath done thereupon, &c. (the offenders to forfeit 10 l. for such default.) And so a Capias Infinite shall go out with like Proclamation; and a forfeiture of 20 l. for every other default, to be presently estreated, &c. Ibid.

If the Offendor yield his body, the Sheriff, &c. shall presently commit him to prison, there to remain without bail, &c. Ibid.

If the Sheriff, &c. do make an untrue Return upon any Capias in

a Writ de Excom. Cap. That the party hath not yielded his body upon any Proclamation made, where indeed he hath yielded, &c. he shall forfeit to the party grieved, 40 l. &c.

Also note that if a Rescous be made to the Sheriffs Servant, Bayliff Errant, or other Officer, it shall be returned as done unto the Sheriff himself; for the arrest is the act of the Sheriff himself, and therefore the Rescous to the servant is a Rescous to the Sheriff himself. Br. Retor. 66. 17 Eliz. Dyer 241. accordant. But if it had been the Bayliff of a Franchise or Liberty, the Return had been good; or else the Sheriff might there have returned, Quod nullum dedit responf. Dyer 241. 39 H 6. Br. 66.

And yet I have seen the report of a Case in Banc. 31 Eliz. where the Sheriff returned a Rescous, Quod Mandavit ballivo hac vice tantum, qui cepit corpus, & *Ad rescous luy del Bayliff*; and exception was taken to his Return, and the former Book, 39 H. 6. alledged: But the Court held the Return to be good enough, by divers Presidents; for notwithstanding that the Rescous to the Servant, or Bayliff, be a Rescous to the Master himself; so as he may return it in his own name if he will; yet that is not compulsary, but that he may return it in the name of his Bayliff.

Vide plus hic postea tit. Retorne del habeas corpus.

CAP. 55.

Capias ad valentiam.

Upon this Writ the Sheriff is to summon the def. (sc. the vouchee) to be before the Justices at the day mentioned in the Writ, &c. And he is to return the name of the Summoners.

The Sheriff is also to seize the Lands of the Vouchee (sc. to such a proportion as the Writ mentioneth) into the Kings hands, by the view and valuation of lawful men of that County, and is to return the certainty of the Lands, and the day of such his seizure, together with the names of those viewors, and of the Summoners, under his seal, as it seemeth by the form of the Writ. Regist. 12.

And this seizure must be of such Lands and Tenements of the Defendant (or Vouchee) as he hath in Fee-simple by Purchase, or as shall discend to him in Fee-simple. Ibid.

Upon this Writ against divers, the Sheriff returned that one of them had nothing, &c. And that of the other he had taken according to the proportion: But for that the Sheriff cannot apportion without a Warrant, he was amerced. Fitz. Ret. 93.

Cessavit per biennium.

Cessavit per biennium. Virtute, &c. Justic. infrascript. certifico quod 20. die Maii Anno Regni, &c. Cepi in manus Domini Regis 3. messuag. &c. infrascript. per visum *A. B. C. D. E. F.* & *G. H.* proborum & legalium hominum de balliva mea, prout interius mihi præcipitur.

Retorna brevis ubi Clericus non habet laicum feodum.

Virtute istius brevis mihi directi Justic. infrascript. certifico, quod infranominatus T. H. clericus est beneficiatus in Episcopatu London. nullum habens laicum feodum in balliva mea ubi potest summon. Nec est inventus in eadem. *Clericus non habet laicum feodum.*

A. B Ar' Vic.

Retorn. de Distringas versus Clericum. Vide hic retorn. de Distring. hic cap. 56. *Distring. Clericum.*

Br. 124. Fitz. 23. In a Scire facias against a Chaplain (or Clerk that is beneficed) upon a Recovery in a Quare impedit, the Sheriff ought not to return quod Clericus est beneficiatus nullum habens laicum feodum, &c. for this is not to be returned, but where a Distring. or Capias in debt, or trespass goeth out, which are a cohersion: But in a Scire facias the Sheriff hath nothing to do but only to warn the party by his person: And yet if in a Scire facias the Sheriff returns, quod est Clericus beneficiatus, nullum habens laicum feodum, &c. Et quod non est inventus, &c. this is a good return; for then he cannot be summoned, if he can neither be found, nor hath lay-fee.

The Sheriff returneth that the Parson ante adventum brevis, or post receptionem brevis, or before the return of this Writ, had resigned his Benefice, &c. Et quod non habet nec habuit bona neque catalla infra, &c. these seem to be good returns. See 2 E. 4. fol. 1. Br. 94. & 2 H. 7. fol. 10. sed 39 H. 6. Fitz. Ret. 30. contra.

In trespass, or debt, against a Clerk, Nihil habet, is a good return: And in a Fieri fac. to have execution of arrerages of an annuity, the Sheriff ought to return, quod nihil habet post receptionem brevis. Fitz. Retorn. 30.

In a Quid Juris clamat, the Sheriff ought not to return, quod clericus est non habens laicum feodum, but he ought to distrain him upon the Land in demand. Fitz. Ret. 59.

But note that Clerks or Ecclesiastical persons (in most cases) upon Process out against them, are to be summoned (or warned) by their person; or else if they have any lay-fee, by their land: And if the Officer cannot find him to summon him by his person, nor that he hath any lay-fee whereupon to summon him, then the Sheriff may return, quod est Clericus beneficiatus, Nullum habens laicum feodum, &c. Nec est inventus, &c. *Et donques le plt. avera brief al Evesque que il face vener son Clerk; & le Evesque luy ferra a vener per sequestration del Eglise.*

Corpus cum causa.

Upon a Corpus cum causa, it is a good return that the party is dead, 32 H. 6. 27. Br. 125. *Corpus cum causa.*

A corpus cum causa went out of the Kings Bench to the Sheriff of York, to have a prisoner in his custody in the said Bench at a certain day; and the Archbishop of York being President there, commanded the Sheriff that he should not deliver the prisoner, &c. and all this matter was returned by the Sheriff; and it was holden that the Sheriff should be grievously amerced for not executing the Writ; for he should have taken Posse Comitatus, &c. Cromp. author. des Courts fol. 78.

Auxi in le case avantdit fuit dit per Seignior Catlin *Chief Justice, que in* 14 E. 3. *brief d'aver corps issist de Banco Regis, & apres le Vic. ad Privy Seal a luy direct per le Roy, luy certificant que le Roy ad luy pardon, & pur ceo luy command de surcease de luy persuer, & uncore intant que le Vic. ne execute le brief fuit amerce grievousment; Car in ceo Court nous teignomus plea coram Regina ipsa, per que ceo est le pluis hault Court le Roy (parlent hors del Chancery ceo que ils voile;) Et il dit ouster que ceo Court est de tiel dignity, que in quel Prison que il soit, nous poiomus command l'Officer de amesner luy icy: Et si home soit in le Tower per commandment del Council, nous poiomus mander luy icy per brief de Corpus cum causa direct al Constable del Tower, & il dit ouster que le Cardinal, esteant Chancellor d'Angliter, command un al Fleet, & per Corpus cum causa il fuit amesne in cel Court in temps* Fineux *Chief Justice, & jour done al Attorney le Roy par* 2. *jours adire quid potest, per que il serra deliver, & pur ceo que al jour pris il rien dira, fuit dismiss: Mes il except le absolute power de Roy d'Angliter, & parle de son Ordinary power, quant al execution de Justice; Et dit ouster al* Carus *Serjeant le Roy (que preia que le Vic. soit amerce) que issint serra; Et que attachment issera de attacher le Cardinal, & le Vic. pur son contumacy; & de mesme opinion fuit Justice* Whidden & Corbet, & Southcot. *Et* Catlin *dit in ceo case, que ils ne usont de monstre in le brief pur que ils nit pur homes, mes ceo nous reservemus in nostres pectus, car poiet estre pur treason, ou grand conspiracy.* Cromp. ibid.

Nota si home condemne (& son corps mise in prison sur execution) aveigne in Chancery per force del Corpus cum causa, il ne serra lessa al bail, mes serra mise al prison arere, si le vic. retorne ceo special matter, &c. *que le prisoner est condemn per judgment done vers luy, &c. Et ceo est per force del Stat.* 2 H. 5. c. 2. Fitz. 251. e.

See more hereof in the return of Habeas corpus.

Retorna brevis orig. in conventione, pur levier fine, ou auterment.

Pleg. de prof. { *J. D.* / *Ri. R.* }

Sum. infranominat. { *Jo. D.* / *Ri. F.* }
R. S.

Covenant. **In a Writ of Covenant to levy a Fine,** Nihil **seems to be no good return; for the Sheriff ought to summon him in** terra petita. 10 H. 6. Fitz. Ret. 12. Br. Ret. 122. dit quære.

In Writs of Covenant the Sheriff may summon the defendant by his person. Br. Summons 1.

In other Writs of Covenant Nihil **is a good return.** Fitz. Ret. 12.

Nota quod in breve de Conventione, Non fit breve de attachiamanto, quia oportet quod partes compareant personaliter in curia. Regist. 165.

Also in this Writ Mandavi ballivo libertatis, &c. **may be returned.** Intr. 133. b.

Or that Clericus est nullum habens laicum feodum, Nec bona laica in balliva sua unde aliq. fieri possunt. Intr. 138.

CAP. 56.

Retorna brevis orignal. in debito. Debt.

PLeg' de prof. { *Johan' Den.* *Richard Fen.*

Fitz. 119. b.] Sum. infranominat. { *Johan. S.* *R. S.* { *Richard. G.*

A. B. Ar' Vic.

And if the Defendant be sufficient, then thus:
Pleg. de prosequend. *J. S. R. M.*
Infranominat. *A. B.* nihil habet in balliva mea per quod summon. potest.

Or thus:

Aliter. Infranominati *A. B.* & *C. D.* (**and if there be more Defendants than two, then you must name but one,** & cæteri def. infranominati) nihil habent, nec eorum alter nihil habet in balliva mea quod summon. possunt.

A. B. Ar. Vic.

Other Returns.

Attachiatus est per Pleg. 195. *Ou attach per biens*, 207.
Clericus est beneficiatus, &c. Intr. 189.
Mandavi ballivo, &c. Intr. 189.
Cepi bona per parcel, que remain pur defalt de emptor. Intr. 164.
Nulla plura bona, &c. in balliva sua unde residuum, &c. vide ibid.
Nul biens ou ters, &c. Ibid.
Non est inventus, *retorne sur* Capias, &c. **Or** Cepi Corpus. Plus hic cap. 53.

And yet the former return of Nihil habent, **is good without saying,** Nec eorum alter Nihil habet, &c.

In debt (or trespass) Nihil habet **is a good return, without saying,** Nec habuit post receptionem brevis, **or** Nec habuit die quo, &c. *car serra intend.* 39 H. 6. Fitz. Ret. 30.

Note that in some cases the Plaintiffs Attornies do use to return the Original; as if the Defendant hath no Freehold within the Shire where he is sued, the Attorney will return the original in debt, or trespass, in this sort:

Pleg. de prosequend. { *Johan. Doo.* *Ric. Roo.*

But this is not warrantable without the Sheriffs consent.

In debt it is no return that the Defendant hath paid the debt. 2 H. 7. fol. 8. Fitz. Ret. 34.

Decies tantum.

Decies tantum. Justic' infrascr. certifico, quod infranominatum *A. B.* ad diem & locum infracontent. coram vobis parat. habeo, ad faciendum & recipiendum quod curia Domini Regis infrascript. de eo consideraverit juxta formam illius brevis.

Detinue. In a Writ of Distring. ad deliberand. &c. in Detinue, it seemeth to be no good return that there are no such goods. Br. 89.

In Detinue where it is awarded that the Plaintiff shall recover the thing demanded, he shall have a Distring. ad liberandum, &c. and the Sheriff may thereupon return issues, or nihil, as the truth is. Br. Charters de terr. 34. Liber Intrac. fol. 212. a. &c. 22 H. 6. 41.

In Detinue the Sheriff is to take Pledges of the Plaintiff de prosequendo: and he must also summon the Defendants to appear at the day.

Nota que in Detinue, Judgment serra done que le plt. recovera les Chattels & damages, & execution serra agard per Distres vers le def. a deliver les Chattels (& auter execution n'avera il de les Chattels) & del damages il avera Fieri facias. *6* R. 2. N. bre. *165*.

And (upon a Writ to enquire of the value) the Sheriff is to enquire by a Jury, and to return what damages the Plaintiff hath sustained as well by occasion of the detention, as also what costs of suit, &c. And further if the Defendant shall not deliver or hath not delivered to the Plaintiff the goods detained, then to enquire of and to return the true value of the same goods. Liber. Intr. fol. 212. a. 215. d. 218. c.

The Sheriff may return Mandavi ballivo libertatis, &c. qui nullum dedit responsum. Liber Intr. fol. 125. c.

He may return { Non est inventus, nec aliquem habet, &c. Intr. 217.
Nihil habet, &c. nec est inventus. Intr. 218.

Note that in an action of debt against executors, if it shall appear that they have paid legacies before debts, or shall pay debts upon simple contracts, before debts upon specialties be discharged, or shall pay debts before they be due, &c. these are a devasting by the Executors: and thereupon judgment shall be given against the Executors that the Plaintiff shall recover against them *de biens le mort*; and if there be not sufficient of the Testators goods left, &c. then execution shall be de bonis propriis, upon a Scire facias against the Executors. Vide Br. Exec. 71. 81.

So if the Executors shall plead *ne unques Executors, &c.* and that be found against them, judgment shall be given against them ut supra. Br. exec. 108.

Retorn. de Fieri facias sur Devastavit.

Devastavit. Virtute istius brevis mihi directi, cepi in manus meas diversa bona & catalla quæ fuerunt infranominat. *H. S.* tempore mortis suæ, in manibus infranominat. *R. O.* & K. uxoris ejus execut. testamen. præd. *H.* administrand. existen. ad valenc. 37 *l.* parcell. deb. infrascript. quæ quidem bona & catalla remanent in custodia mea pro defectu emptorum. Et ulterius Justic. infrascript. certifico quod præd. *R. O.* & *K.* diversa bona & catalla quæ fuer. præd. *H.* tempore mortis suæ ad valenc. resid. deb. Wilk. 62.

& dampn.

& dampn. infraspecificat. vendiderunt, & devastaver. & denarios inde provenient. ad usus suos proprios converter. Ita quod relid. deb. & dampn. infraspec. de bonis & catallis cujusdam *H. S.* levari seu fieri facere non possum. Et ulterius Justic. præd. certifico quod prædict. *R. O.* & *K.* uxor ejus nulla habent bona seu catalla de bonis & catallis suis propriis in balliva mea unde relid. deb. & dampnorum infraspecificat. aut aliquam inde parcel. fieri facere possum prout interius mihi præcipitur.

Plus hic postea Retorne de Fieri fac. cap. 61.

Disceit.

F. N. B. 98. d In a Writ of Disceit if the Sheriff returneth the one Summoner to be dead, it is good, and yet the other Summoner shall be examined, &c. And if it be found that the Sheriff made no summons, &c. the party shall be restored to his land. *Disceit.*

Distringas, vers le def.

If the Defendant be sufficient, then thus:

Manucapt. infranom. *J. F.* { *J. Doo.*
Exit, 3 s. 4 d. { *R. Roo.* *Distr.*

Nihil. Note that the Sheriff must return hereupon reasonable issues. See hic c. 89.

J. F. infranominat. nihil habet in balliva mea per quod, nec ubi potest distringi.

J. F. infranominatus Nihil habet in terris, tenementis, & hereditamentis infrascript. per quod ipsum Distringere possum. *Aliter.*

En brief de accompt, sur le Distring. le vic. retorne Mainpernors, & quod non sunt exitus, & est adjudge bon retorne, Fitz. Ret. 120.

In an attaint upon the Distringas the Sheriff cannot return that the Defendant is dead. Br. Ret. 1. 18 H. 8. 5. otherwise he may.

In debt upon the Distringas the Sheriff returned Mandavi ballivo libertatis, &c. qui nullum dedit responsum; and for that he did not further return quod null. habet exitus in balliva mea, the Sheriff was amerced. Br. Ret. 23.

xl d. xl d.

T. D. A. R. &c. districti sunt, & quilibet eorum districtus est, per terr. & catall' sua secund' formam hujus brevis, unde exitus prout patet superius in eorum capitibus, & manucapti sunt, & quilibet eorum manucaptus est per se, viz. per *J. D. J. S. P. H.* quod sint, & eorum quilibet sit ad diem & locum infrascr' juxta tenorem hujus brevis, &c. *Vers plusors.*

xl d.

A. quæ fuit uxor *B. R.* infrascript' executrix testamenti *C. D.* *Vers execut.*

xl d. xl d.

B. R. J. S. alius executor testamenti prædict' *B.* & *T. S.* tertius execut' testamenti præd. *B.* districti sunt, & eorum quilibet per se separatim distr' est, juxta formam hujus brevis unde exit prout patet superius in capitibus eorundem; Et eorum quilibet manucaptus est per se, viz. per quatuor manucaptores nomine *A. B. C. D. E. F.* & *G. H.* Et non sunt plures executores testamenti ejusdem *B.* nec hæredes ejus fuerunt in comitatu *C.* prout aliquo modo ad præsens constare mihi potest.

Distr. est per Catalla ad valenc. 20 d. Intr.

Pleg. de proseq. *J. D. R. R.*

A. B. infrascript' nihil habet in balliva mea ultra exitus prius forisfactum, per quod nec ubi distringi potest, prout mihi aliquo modo * constare potest ad præsens. (*Ser. le 2. ou 3. distr.*) (Nihil. * Quære de cest retorne hic fol.)

W. D. Archidiaconus *R.* nihil habet in balliva mea de laico feodo per quod, nec ubi distringi, summon. seu attachiari potest aliquo modo prout ad præsens mihi constare potest. (*Vers. Cler'.*)

And yet where the Process is to distrain a Clerk, the Sheriff must summon him by his person, or by his land if he hath any Lay-fee. Finch. 135. *Averment, &c. si le vic. retorne,* Quod est clericus beneficiatus, non habens laicum feodum, *la Proces issera al ordinary a faire luy de vener, per lissues de son benefice.*

Quod distringend' infrascript' *A. B.* essendi coram Justic' infrascript' ad diem & locum infracontent', illud breve adeo tarde mihi deliberat' fuit, quod propter temporis brevitatem executionem inde facere non potui. (*Tarde.*)

Note that in a Distringas per omnes terras suas, ita quoad habeas corpus ejus, &c. the Sheriff must return issues (upon the Defendant) and not distrinxi, &c. vide hic c. 36. (Br. 24.)

In debt or trespass upon the Distringas the Sheriff returned but 6 d. in issues, and was therefore amerced; for that the issues of the Defendant was less then the charges of the Plaintiffs Writ of Distringas. Fitz. Amerc. 3. Br. 120. Plus hic, cap. 89.

Return de Distring. Jurat'. See hic postea Retorn. de Venire facias. (*D'str' Jur.*)

Although the words of the Distringas be, quod Distringas per omnes terras & Catalla sua in balliva tua, yet the Sheriff ought to distrain him but reasonably, and not according to the words of the Writ. Kell. 117.

Dower.

Admeasurement de Dower. Vide hic antea tit. Admeasurement. (*Dower.*)

Retorne de summ. in Dote.

Pleg. de prosequend. { *J. Doo.* / *R. Roo.* }

Sum. infranom. { *J. H.* / *J. W.* / *W. C.* }

Et ad maxime usuale ostium Ecclesiæ Parochialis de *P.* infrascript. super diem Dominicum, scilicet quartum diem Julii, anno infrascript' immediate post divinum servitium, (nulla Prædicatione ad tunc & ibidem existen) publice proclam. feci secundum formam statuti, prout istud breve in se exigit & requirit. (Stat. 31 Eliz. cap. 3.)

A. B. Ar. Vic.

So that upon this Writ the Sheriff must first summon the Defendant upon the Land.

After he is to Proclaim the summons at the Church-door of the Parish, where the Land lieth.

And then he must make this Return as before.

And yet a summons to the person of the Defendant seemeth sufficient without

without either Summons upon the Land, or Proclamation at the Church-door.

Retorne de Petit Cape in Dower.

VIrtute, &c. tali die & anno cepi in manus Domini Regis tertiam partem tenementorum infraspec' cum pertin. prout interius mihi præcipitur.

A. B. Ar' Vic'.

Upon the Petit Cape, the Sheriff must Summon the Tenant to answer his default only; and not to answer to the Demandant.

And upon the Petit Cape, the Sheriff is to seize the Lands into the Kings hands fifteen days before the Return. Vide Fitz. Grand Cape 19. Br. Ibid. 36.

Retorna brevis de visu in Dower.

JUstic' infrascript', certifico quod virtute istius brevis mihi direct. habere feci infranom. *A. B.* visum de tertia parte tenementorum infraspec' in præsent' *N. C. R. D. W.* B. & *C. D.* quatuor milit' ex illis qui vis. illi interfuerunt. Et ulterius certifico quod dicti quatuor milit' præd. quod sint coram Justic' infrascr' ad diem & locum infracontent' ad testificand' visum illum prout per breve præd. mihi præcipitur.

A. B. Ar' Vic.

En brief de Dower. le demand fuit del 3. *part del Office, &c. le view fuit demand de ceo que poiet estre mise in view, &c. le place ou le Office fuit, &c.* Fitz. View. 90.

Dower le Demand. fuit del moiety de 20 l. *Et le meason & un Carve del terre dont ceo issue, fuit mise en view.* Fitz. Dower 113.

Retorna brevis de seisina in Dote.

Executio istius brevis patet in quadam sceduła huic brevi annex'.

JUstic' Domini Regis Certifico quod virtute brevis Domini Regis mihi directi & huic scedul' annex' decimo die A. anno, &c. habere feci *P. B.* vid. in brevi præd. nominat', plenar. seisinam de tertia parte manerii de B. cum pertinen. in eodem brevi spec', viz. de una aula & coquina, de duob' shopis in tenur. dicti J. cum liber. ingress. & regress. ab & ad easdem, nec non superiori parte domus mansional' in tenura E.C. ab introitu versus Austral. ac de uno clauso seperali voc' H. continen' per estimac' quinque acr', ac de quatuor acr' pasturæ jacen' in boreal' fine, unius clausi voc' B. & de una acr' pasturæ voc' C. in brevi spec' tenend. præf. P. B. in seperali per metas & bundas, nomine totius dotis ipsius P. ad ipsam P. contigen. de toto manerio in dicto brevi spec' prout per breve prædict. mihi præcipitur. *Seisina in Dower.*

A. B. Armig. Vic'.

Executio istius brevis patet in quadam scedula huic brevi annex'.

Virtute, &c. & huic scedulæ annex' tali die & anno habere feci J. B. vid. in præd. brevi nominat. plenariam seisinam de tertia parte manerii de B. cum pertin' in eodem brevi specificat', viz. &c. (*& reberse les particulars* ut in brevi) tenend. præf. J. B. in seperal' per metas & bundas nomine totius dotis ipsius J. ad ipsam J. contingen. de toto manerio in dicto brevi specific' prout per breve præd. mihi præcipitur.

Nota que feme que Recov. Dower, ne poet enter, mes doit aver seisin deliver a luy per le Vic. Plo. 529. Co. L. 34. b.

Upon an *Habere facias Seisinam in Dote, de tertia parte, &c.* the Sheriff returned that he offered to the Demandant the Seisin *de Tertia parte Tenementorum prædictor.* (and shewed in certain the parcels which should make the third part) by meets and bounds in severalty, according to the tenor of the Writ, and that the Demandant refused to receive them of him; this was holden to be a good return.

Et icy nient obstant le refusal del demandant uncore fuit tenus que le Entrie *le demandant a touts temps apres fuit Congeable, eo que le certenty appiert.* Dyer 278.

But if the Sheriff in the beginning returns, *Quod habere fecit Seisiam*, and shews the parcels, *Qua omnia obtuli deliberari, &c. sed ipse recipere recusavit*, this is repugnant, and therefore void. Dyer 278.

If a woman recover in a Writ of Dower, the Sheriff may put her in Execution or Seisin by a Clod, or by grass growing upon the Land, or by any Beast being thereupon, &c. 40 E. 3. Fitz. Dower 38. *Mes le feme ne poiet User les beasts, &c.*

In a Writ of Dower, a Writ went to the Sheriff to deliver the wife ten marks per An. in Land, and Rent, for her Dower, and the Sheriff delivered her in Land five marks in yearly value, and five marks in Rent issuing out of the Land, whereof she was Dowable, and it was holden a good Indowment. Br. Dower 61.

In Dower of three Mannors, or three Acres, the Sheriff may assign to the Wife one Mannor, or one Acre for all; and he may assign the whole Mannor with the Advowson; or may assign the third part of each, and the third Presentment. 12 E. 4. Br. Dower 72. Ph. 63, 66.

If the Sheriff shall deliver to the Wife, the moyety of the Lands whereof she demandeth Dower, it seemeth no remedy against him. Br. Extent. 13. & Fitz. Execut. 265.

And note that in Dower, the Sheriff is to make Execution, and put the wife in Execution of the third part by Meetes and Bounds, if he can, 3 Eliz. accordant & Co. L. 34. & 32. And here the Sheriff is a Judge, and may execute the same himself, and shall not need to do it per Sacramentum, 12. &c. But, if the Sheriff and the Wife shall come together to the Land, the Sheriff may not make Execution by these words, or in this manner, sc. I deliver thee seisin of the third part of the Land according to the Recovery; for that is not good. Fitz. Scire fac. 92.

In a Writ *de Seisina in Dote* directed to the Sheriff, it is no answer nor good Return for the Sheriff to alledge Non tenancy in him whom the Writ or Record supposeth, or mentioneth to be Tenant. Plo. Mauxels Case, fol. 14.

Sur Recovery del 3. part del Mannor in Dorcet, le vic. assigne al Feme un Coppihold, ove autres ters. Dyer 251.

In some Cases the wife cannot have her Dower assigned by Metes and Bounds, but must hold her Dower *per my & per tout in Common.* As of the profits of a Mill, or of a Wood, which Coparceners hold, &c. Fitz. Avowry 91. Or of a Common of Pastor. Fitz. Entr. 75. Assise 435. Or of an Office, or of Lands held in Common. Fitz. 149. 1. h. And yet Co. L. 32. She may have a third part of the profits assigned to her. Vide.

Retorn' brevis de inquirend' de dampnis in Dote, ubi tenens obiit seisitus.

Executio istius brevis patet in quadam Inquisic' huic brevi annex'.

Inquisitio indentata capta apud Cantabr. in Com. præd. duodecimo die Jan. anno, &c. coram me A. B. armig. vicecom. com. præd. virtute brevis Domini Regis mihi directi, & huic inquisition. annex' per sacramentum C. D. E. F. G. H. &c. (ad numerum duodecim ad minus) qui dicunt super Sacrament. suum, quod infranominat. W. K. quinto die Januar. anno, &c. apud K. in com. præd. obiit seisitus in Dominico suo ut de feodo, de & in tenementis infraspec', Et quod tenement' præd. sunt clari annui valor. in omnibus exit. ultr. repris. 20 *s.* Et quod sex anni & tria quarteria unius anni dilabuntur, à tempore mortis præd. W. K. Et quod infranom. J. D. sustinuit dampna occasione dotis suæ infraspec' ad valenc' 10 *l.* In cujus rei testimon. tam ego præf. vic' quam Jur. prædict. huic inquisic' sigill' nostra alternatim apposuimus, die, anno. & loco supradict. &c. *Inquir. de dampnis in dote. Cantabr.*

A. B. Ar' Vic'.

Upon a Writ to Enquire of Damages, if the Jury will find no Damages, and the Sheriff maketh his return accordingly; although such Return be not good, yet the Sheriff shall not be amerced for this default of the Jury. Br. Retor. 26. Fitz. Ret. 66.

And yet by others it is a good return, that the Jury gave no damages; for the Sheriff returneth what they did. 44 E. 3. 3. Finch. 229.

7 H. 4. Br. 106. In a Writ of Right a Writ de Mag. Assisa eligenda went to the Sheriff to summon and return four Knights before the Justices of Assise, to chuse the Grand Assize, returnable such a day, and the Sherift returned that there were no Knights but Burgesses; whereupon the Sheriff was amerced, and another Writ went out, &c. and the four Knights were demanded, who came to the Barr with their Swords girt about them, &c. And so it seemeth (by the opinion of Mr. Brook) that the Sheriff may return them Knights, although they be no Knights. See the like hic antea fol. Plus hic cap. 86. Vide Co L. 294. that if there be not four Knights, the next to them in the County shall be taken. *Brief de droit.*

39 E. 3. 2. Br. 121. In a Writ of Right the Sheriff returned two Knights, and two Serjeants, or Esquires, to chuse the Grand Assize; and it was holden a good return of two Knights and two Serjeants (or Esquires:) But then the Sheriff must return that there were no more Knights within the same County: but to return two Knights and two Serjeants, for that there were no more Knights within the same County, which were not of kindred to the Parties, was holden to be an insufficient return: for that should have come in by the challenge of the parties. Fitz. Fitz.

Retor. 60. And yet Quære for that the four Knights Electors are not to be challenged. Co. L. 294.

Retorne in Br. de Droit. { *Que le Plt. invenit sibi pleg. de clamore suo prosequend. & vid. &c.* *Que le Defendant Summonit. fuit per, &c.* — *Intr.* 243.

The Jury in a Writ of Right is called the Grand Assize, being four Knights, or others, in default of Knights, chusing a Jury of seven unto them. Finch. 412.

Note where the four Knights had chosen 16 Knights to have the Grand Assize, and the Writ went out to summon them, the Sheriff returned, that there were not so many Knights in the County, as the four had chosen. Fitz. Trial. 97. Br. Jurors 45.

If the Plea be removed by Pone out of the County into the Court of Common Pleas, the Sheriff needeth not to Return the Tolt, whereby the Plea was removed out of the Lords Court, to the County Court, &c. Fitz. Record. 10 10 E. 3.

The Return of the Baylif of the Court may be thus, Quod præd. T. (the Defendant) Nihil habet in balliva mea per quod potest attachiari. Nec habet ballivum, nec inventus est. Liber Intrac. fol. 242. b.

CAP. 57.

Ætate probanda.

In a Writ de Ætate probanda awarded to the Sheriff, to enquire of the age of the Kings Ward (who is come to his full age) it is required by Law, that every one that shall pass in that Enquest shall be of the age of 42 years: The Law intending thereby that they and every one of them should be of full age, at the birth of such Ward, because that such (in all likelihood) have better knowledge therein then others of lesser age have, or can have. And the Heir that is in Ward, is to enform the Enquest by certain signs and tokens of the time of his birth: *Come a dire, que in mesme l'an, la fuit un grand tempest, ou Un grand Plague, vel simil.* which signs he might hear from his Parents, &c. And which signs so given in evidence shall also be returned by the Sheriff, as well as the principal matter. 21 R. 2. Fitz. Livery 5. & Stamf. 79. & Br. Jurors 42.

But Quære whether this be so in use at this day, or no: Or whether the Church-Book where he was Baptized, be not a more material and more sufficient proof of his age; and so that it now shall not be so needful to have the whole Enquest of the age of forty three years as aforesaid. Vide Fitz. 257. the form of the Writ directed to the Sheriff to return a Jury before Commissioners to this purpose: But yet again the form of the Writ directed to the Escheator in such Case, seemeth to imply that the Jurors should be of such age or years, that thay may have knowledge of the birth and age of the Ward; the same Writ being in these words, Præcipimus quod, &c. probationem illam per Sacram.

proborum hominum, &c. per quos probatio illa Capi, & veritas ætatis melius sciri poterit & inquiri Capias, &c. Fitz. 253. 254. Old Na. Br. 159.

Now for the number of the Jury to inquire of the Age of the Kings Ward. See hic cap. 86.

Ejectione firmæ.

Plegii de Prosequendo } *Johannes Doo.* *Rich. Roo.*

Infranominatus A. B. attach. est per centum oves, precii viginti librarum. Or Attachiat. est per Pleg. B. C. D. E.

Infranominati C. D. & E. F. nihil habent in balliva mea per quod attachiari possunt.

Eligend' Coronator'.

AD com' meum tent' (tali die & anno) in pleno com' prædict', virtute istius brevis, de assensu ejusdem com. loco P. H. infranominat' (qui diem clausit extremum) elegi Coronat', viz. J. W. qui (prout moris est) Sacramentum præstitit corporale quod ipse ea faciet, & conservaverit quæ ad offic' coron. in com. præd. pertinent faciend', prout interius mihi præcipitur, &c. *Eligend. Coronator.*

Eligend' Milit' Parliament'.

Virtute istius brevis mihi directi, in pleno Comitat. meo tent. apud Cantabr. tali die, &c. Anno, per assensum ejusdem Comitatus Eligi feci duos milites de Com. meo præd. vid. E. P. & J. C. ad faciend. prout illud breve in se exigit & requirit.

Virtute istius brevis mihi directi, ad primum Comitat. meum post receptionem ejusdem brevis, & in pleno Com. illo, tent. apud C. tali die & Anno, Eligi feci duos milites gladiis cinctos magis idoneos, & discretos de com' meo præd', viz. W. F. & J. S. qui quidem milites plenam & sufficient' potestatem pro com' (Or *pro se*, & Communitate Comitatus) præd' habeant, ad faciend' & consentiend' hiis quæ ad diem & locum infracont' de communi consilio Regni Angliæ ordinar' contiger. & prædict. W. F. & J. S. manucapt' sunt per J. P. W. B. J. D. & R. N. ad essend' ad Parliament' Dom' Regis apud Westm. ad diem infracontent', ad faciend' prout istud breve in se exigit & requirit. Feci etiam præceptum virtute hujus brevis J. P. & W. S. ball' libertat' villæ de — in Com. meo, quod de eodem Burgo de C. eligi fecerent duos Burgenses de discretior. & magis sufficient' quod sint ad Parliamentum dicti Domini Regis ad diem & locum infracontent', ad faciend' & consentiend' ut præd' est: qui quidem ballivi sic mihi respondent quod eligi fecerunt de præd. Burgo de C. duos Burgenses discretos, & magis sufficient. ad essend. ad Parliament. prædict. viz. S. W. & R. W. ad faciend. & consentiendum ut supradictum est. *Aliter. Eligend. milit. Parliament.*

Virtute etiam istius brevis proclamari feci omnia in isto brevi content. secundum formam & effectum hujus brevis, prout hoc breve in se exigit & requirit.

Residuum vero executionis istius brevis patet in quibusdam Indenturis huic brevi annex.

Eligend. Burg. Parliament'.

Eligend. Burg. Parliament'.

Virtute, &c ad proxim. com. meum post receptionem ejusdem tent. apud C. tali die & ann. in pleno comitat. illo proclam' feci omnia in isto brevi content. secundum formam & effectum hujus brevis prout,&c. Resid. vero executionis istius brevis patet in quibusdam Indentur. huic brevi consut'.

Indenture.

Hæc Indentura facta tali die & anno inter A. B. Milit. vic. com. C. ex una parte & * J. D. & C. B. &c. ex altera parte Testat. quod secund. formam brevis, huic Indentur. cons. (fact. proclamat. in pleno com. meo tent. apud C. tali die & anno prædict.) J.D.& C. B. & alii qui proclamac. prædict. in pleno com. prædict. interfuer. secundum formam statutorum in brevi prædict. specific. & secundum exigen. brevis illius, ad elig. A. D. & J. A. essend. Burgens. civitatis prædict. ad Parliamentum in eodem brevi specificat. qui plenam & sufficientem potestatem pro se & communitate Civitat. prædict. habent ad faciend. & consentiend. prout breve illud in se exigit & requirit. In cujus rei testimonium partes prædict. hiis Indent. sigilla sua alternatim apposuer. Datum die Ap. Anno, &c.

* These persons must be free Citizens or Burgesses of the Town, and such as were choosers. See hic c. 92.

The like Indentures are to be made between the Sheriff and the Freeholders of the Shire, upon the choosing of their Knights for the Parliament, and word for word, as the former (mutatis mutandis) **until you come to these words,** Elegi A. D. & J. A. milites, gladiis cinctos pro Comitat. prædicto, ad Essend. ad Parliamentum in eodem brevi specificat. Qui plenam & sufficientum potestatem pro se & Communitat. Comitatus præd. habent, &c. ut supra.

Eligend' virid. forestæ.

Eligend' virid. forestæ.

Domino Regi certifico quod infra nominatus J. H. ante advent. istius brevis mihi directi mortuus fuit,quodque ego post receptionem istius brevis mihi directi, in pleno com. meo tent. apud C. in com. meo 29. die Maii anno infrascript. ex assensu ejusdem com. loco prædict. J. eligi feci quendam. N.S. Armig. viridarium forestæ de B. infrascript. ad faciend. prout breve illud in se exigit & requirit.

Retor. Brevis ad Inquirend. de Dampnis.

Executio istius brevis patet in quadam inquisitione huic brevi annexa.

Enquirie de dampnis. Vide hic Trespass.

Inquisitio indentat' capta apud C. in Comit' Cantabrig. tali die & anno, coram A.B. Armig. vic' ejusdem com. virtute cujusdam brevis Dom. Regis eidem vic. direct. & huic inquisitioni consut. per Sacrament. R. S.M.G.&c. (ad numerum 12 Jurator.) qui dicunt super Sacramen. suum quod A.P. in brevi huic inquisitioni consut. nominat. sustinuit dampna occasione transgress. per J. H. in prædicto brevi nominat. prout in eodem brevi fit mentio ad 40 s. Et pro misis & custagiis ipsius A. P. per ipsum circa sectam suam in hac parte appositis ad 40 s. In cujus rei, &c.

CAP.

CAP. 58.

Retorne de Elegit.

EXecutio istius brevis patet in quadam inquisitione huic brevi annexa.

A. B. Ar. Vic.

Cantab. Inquisitio Indentat' capta apud *L.* in com. prædict. decimo die Junii anno, &c. coram me *A. B.* Armig' Vic' com. prædict' virtute brevis Domini Regis mihi direct' & huic Inquisitioni annex', per Sacrament' *T. B. &c.* (& sic xij. plur' ad minus) qui dicunt super Sacrament' suum, quod *B. C.* in brevi prædict. nominat. tali die & anno, &c. fuit seisit. in Dominico suo ut de fœdo, de & in uno messuag' vocat. &c. cum pertin. jacent' & existent' in *L.* in com. prædict' modo in occupatione *A. J.* viduæ clari annui valoris in omnibus exit. ultra repris. 40 s. Ac etiam de & in uno gardino cum pertinen. vocat. &c. in *L.* prædict' clari annui valoris in omnibus exit. ultra repris. 20 s. Ac etiam de & in uno alio messuagio cum pertinen. in *L.* præd. scituat. jacen' & existen' prope, &c. nuper terr' cujusdam *R. A.* defuncti modo in occupatione *B. C.* vel assign. suorum, simul cum omnibus gardinis & edificiis eidem messuagio spectant. sive pertin', clari annui valoris in omnibus exitibus ultra repris. 5 l. Ac etiam de & in uno alio messuagio vocat. &c. in *L.* prædict. in tenura præd' *B. C.* clari annui valoris in omnibus exitibus ultra repris. dece. solid'. Et Jur' prædict. super Sacramentum suum prædict. ulterius dicunt quod messuag. prædict. in tenura prædict' *C. D.* una cum gardino eidem messuag. jacen' & spect' cum omnibus & singulis suis pertinen. sunt vera & equalis medietas omnium & singular' terr' & tent' & hæreditamen. quorum cunque in Com. nostro prædict. *A.* in dicto brevi nominat. quam quidem medietatem ego præfat. Vic. deliberari feci *R. S.* in brevi prædict. nominat. tenend. sibi & assignat. suis juxta formam statuti inde provis. ut liber. tenementum suum, quousque debitum & dampna sua in brevi prædict. mentionat. plenar. inde levaverit, prout breve prædict. in se exigit & requirit: Et ulterius Jurat. prædict. super Sacramentum suum prædict. dicunt quod prædict. *B. C.* nulla alia sive plura bona habent seu die recuperac' debiti prædict. (or die judicii) habuit bona aut catalla, terras sive tenementa in com. præd. In cujus rei testimonium, tam ego præfat. Vic. quam Jurat. prædict. huic Inquisitioni sigilla nostra alternatim apposuimus, die, anno & loco, supradict. &c. *Elegit.*

A. B. Ar' Vic.

Virtute istius brevis ego *A. B.* Vic. com. infrascript. (tali die & anno) liberavi *J. B.* medietatem maneriorum in inquisitione huic brevi consut. specificat. cum pertinent. per extent' in dicta Inquisitione fact' tenend. sibi & assig. suis, ut liberum tenementum suum, quousque idem *J. B.* debitum & damp. sua infrascript. levaverit, prout interius mihi præcipitur. *Aliter.*

Virtute istius brevis (tali die & anno) liberari feci infranominat. *A. B.* medietat. *Aliter.*

medietat' maner' de S. cum pertinentis, extent' ad annum valorem quatuor librarum sterlingorum in omnibus exitibus ultra repris. p. 12. Jur' in Inquisitione huic brevi consut' nominat', de quo quidem manerio cum pertin' B. G. & E. uxor ejus fuerunt inde seisiti ut in jure ipsius E. in fœdo ut de libero tenemento, die captionis Inquisitionis prædict', prout in eadem compertum est, Habend' & tenend' eandem medietatem manerii prædict' cum pertinen', sic extentam, prædict' A. B. & assign' suis ut liberum tenement' suum, quousq; infraspec' 4. libras inde levaverit juxta formam istius brevis, Resid. verò execut. istius brevis patet in quadam Inquis. huic brevi consut. &c.

Upon an Elegit against him that hath two Mannors, the Sheriff may deliver the one Mannor to the Plaintiff in the name of the moiety of all, and is not bound to deliver the moiety of each Mannor; And so of two acres of land; but this seemeth to be where the two Mannors or two acres be of equal value. Br. Elegit 14. 12 E. 4.

Sur Elegit, pur ceo que appiert sur le Inquisition que le def. ad convey son terr. al autres sur condic. &c. Et uncore prist les profits continualment, le vic' retorne que il & le Jury (sur ceo trove) sont in doubt si le terr. serra extend. & preyont discretion des Justices. Dyer 295.

Brief de extent fuit agard tempore Mariæ, *& le brief execute per inquisition in vie le Royne, mes devant le retorne el devy, & le vic. retorne ceo; quære si le retorne ne soit sans garrant.* Dyer 206.

The Sheriff may return the extent for lands, and no goods. Or may return the extent for goods, and that the party had no lands. Libr. Intr. fol. 261, 262.

The Sheriff may return Mandavi ballivo libertatis, &c. ibid.

He may return quod J. S. infranom. Nulla habet bona neque catalla in balliva mea, quæ C. N. infranom. per aliquod precium deliberari facere possum, ibid.

Or thus (as the case may be) sc. Nulla habet (or habuerit) bona neq; catalla in balliva mea, tempore Judicii (unde infra fit mentio) reddit. nec postea: or tempore captionis inquisitionis illius, nec tempore recuperac. præd. or Quarto die M. ult. præterit. in brevi specific. Quo die idem breve emanavit, nec unquam postea. Ibid.

Sur Elegit le vic. retorne, que il ad extend le terre le def. mes ne poet deliver ceo al plt. in tantque un auter ad ceo in extent devant, ceo semble bon retorne: Et uncore le vic. puissoit aver seise le terre & deliver ceo (sc. le reversion cum acciderit) al plt. nient obstant que fuit in extent devant (come semble) fuit le case d'un Palmer *in Banco Regis circa.* 30 Eliz. vide Fitz. Retor. 112. hic retorn de extent.

Auxi si A. *soit indebt al* B. *& son terre soit in execution per* Elegit (sc. *le moiety del ceo) & apres le Roy, ou auter person ad auter execution pur son debt, vers le dit* A. *icy le vic. poiet deliver al Roy, ou auter person, le second moiety, & auxi le reverc' del primer moiety cum acciderit.*

Note that upon an Elegit, the extent and valuation of the lands, and the praising of the goods, must be by an Enquest (sc. per Sacramentum 12. proborum & legalium hominum) and not by the Sheriff himself; although the Writ speaketh of no Inquisition. Vide Co. 4. 74.

Upon an Elegit the Sheriff returned that he had delivered to the Plaintiff goods and chattels of the Defendants, ad valentiam 20 l. per rationable pretium, and shewed what the goods were in certain; and also that he had delivered twenty acres of land of the Defendants, quæ est medietas omnium terrarum, per rationabile extentum; but returned

no

no inquisition, sc. per Sacramentum 12. &c. and it seemeth by the Court there, that the extent ought to have been by inquisition, &c. and that the Sheriff himself cannot extend it. Dyer 100.

Also upon an Elegit the Sheriff is to make execution by meets and bounds.

Upon the Elegit the Sheriff may return Nihil (Fitz. Execution 52. 58. Br. Exec. 64. 72.) or he may return that he hath extended the land of the Defendant, but that he cannot deliver the same to the Plaintiff, for that another had the same in extent before. Vide hic c. 28. & 26.

Deliberat. post extentam factam super obligat. Statuti Stapulæ.

VIrtute, &c. liberavi infranominat. B. S. maneria, terras, & tenementa infrascript. habend. sibi & assign. suis, ut liberum tenementum suum quousque sibi de debito infrascripto, una cum dampnis, misis, & expensis suis plenarie fuerit satisfact. prout, &c.

Fitz. 266. c. Upon an Elegit the Sheriff returneth, that the Conusor hath made a feoffment of divers parcels of his lands to divers Tenants, &c. and of all the residue that he hath infeoffed the King, the Kings lands are to be discharged, &c. But upon a Scire facias to warn the other tenants to come at a certain day to shew cause why their lands shall not be put in execution, if the Sheriff returneth them Garnie, if they shew not cause to bar the execution, their lands shall be extended, &c.

Brief de Estrepement.

Note that the Sheriff by force of this Writ may resist them which are about to (or would) make waste; and if otherwise he cannot stay or refrain them from making waste, he may imprison them, and may make his Warrant to others to imprison them; And if it be needful, he may take Posse comitatus for his aid. Co. 5. 115.

Et ceo brief de Estrepement gist in action de Wast. cibien al ascun temps devant judgment, come apres judgment, & devant execution, Car il ne poet recover damages pur plus que il ad contain in son count, & il ne poiet assign ascun wast fait apres le brief purchase. Foliambes Case, Co. part 5.

Retorn de Extent sur Recogn. ou Statut.

VIrtute istius brevis mihi directi cepi corpus infranominat. W. W. cujus quidem corpus, ad diem & locum infracontent. parat. habeo, prout interius mihi præcipitur. *Extent.*

W. W. infrascript. non est inventus in balliva mea. Et ulterius certifico quod seisiri feci in manum Domini Regis Manerium de, &c. cum pertin' in inquisitione huic brevi consut. specific. prout interius mihi præcipitur. Libr. Intrac. fol. 598. *Aliter.*

Resid. Execut. istius brevis patet in quadam (or prædict.) inquisitione huic brevi annex.

A. B. Ar' Vic.

Cantab. Inquisitio indent. capta apud C. in com. prædict. 12. die Januarii Anno &c. coram A. B. Armig. Vic. com. præd. virtute brevis Domini Regis mihi direct. & huic inquisitioni annex. per sacrament. T. B. &c. (ut super:) Qui dicunt supra Sacrament. suum, quod W. W. in brevi præd. nominat. die Recog. debit. in eodem brevi spec. fuit seisitus in dominico

suo nt de feodo, de & Manerio de A. in com. præd. clari annui valoris in omnibus exitibus ultra repris. C l. Ac de & in Manerio de C. in com. præd. clari annui valoris ultra repris. C l. Et ulterius Jurat. prædict. super Sacrament' suum prædict' dic' quod prædict. W.W. die recogn' debit' prædict. seu unquam postea, nulla habuit bona seu cattall', neque al' sive plur' terr' sive tenementa in com' prædict' ad eorum noticiam, quod extend' appreciari aut in manus dicti Domini Regis capi aut seisiri possint: Quæ quidem Maneria terr' & tenementa prædict. cum pertinen' ego præfat. Vic. die caption' hujus inquisitionis cepi in manus dicti Domini Regis per extent' prædict. In cujus rei testimonium tam ego præfat' Vic' quam Jurat. prædict. huic inquisitioni sigilla nostra alternatim apposuimus, die, anno & loco supradict. &c.

A. B. Armig. Vic'.

Sur extent sur Stat. Merchant le Vic. retorne que le corps ne poiet estre trove, & que il aver extend le terr. & deliver al plt. Regist. 146. **And note that if the Sheriff shall return that he hath extended the land, and shall not return further that he hath delivered the same to the Plaintiff, he shall be amerced.**

Sur extent sur Stat. Staple le Vic. retorne le extent del terr. & non des biens uncore bon. Br. tra. 438.

Le Vic. poiet retorne que le def. avoit riens jour de le recogn. fait, mes que il ad purchase ters puis le temps. Termes del Ley, tit. Elegit.

The Sheriff may return Non est inventus, nec habet bona, nec terras.

Or the Sheriff may find, Nul terr. si non jure uxoris quæ supervixit. **Or** *que le recogn. purchase le terr.*

The Sheriff returned *quod nullus venit a receiver le terr. &c.* Libr. Intr. 596.

Two sued to have execution of a Statute Merchant; the Sheriff returned that one of the Plaintiffs was dead. Fitz. Execution 38. Libr. Intr. 595.

One sued to have the body of the Conusor of a Statute Merchant, and the Sheriff returned the Conusor Mortuus. Fitz. Execution 97. vide Dyer 299.

The Sheriff returned that he had no land but in Ancient Demesne, Ret. 109.

Aliter. Virtute, &c. Domino Regi in Cancellaria sua, ad diem & locum infracontent. ubicunque tunc fuerit, certifico, quod tali die & anno seisinam & possessionem de & in Manneriis, terris & tenementis infraspec' infranominat' *W. C.* liberavi secundum exigen' istius brevis; ac infranom. *H. M.* non est inventus in balliva mea.

Aliter. *J. M.* infrascript. non est inventus in balliva mea; Ideo ipsum capere non possum ad præsens. Sed quoad extendend' & appreciand' omn. terras & cattalla ipsius, *J. M.* juxta formam istius brevis, Execut. inde patet in quadam Inquisitione huic brevi consut. Quæ quidem terr' & catall' in dicta inquisitione content', in manus Domini Regis seisiri feci.

Aliter. *A. B.* infranominat, non est inventus in balliva mea; Et ideo virtute hujus brevis mihi direct. extendi & appreciari feci omn. terras & tenementa, bona & catalla præd. *A.* in dicta balliva mea: Quæ quidem extent. huic brevi est annex. ac etiam omn. terras & tent. prædict. in eadem extent. specific. una cum dampnis & custag. suis rationabilibus levavi, juxta formam statuti inde editi & provisi, & secundum formam hujus brevis.

Upon

Upon an extent of a Statute Merchant, or Staple, the Sheriff may return that the debtor is a Clerk, hic cap. 24, 25.

Upon an extent of a Statute Merchant if the Sheriff returneth quod breve tarde venit, or returneth that he directed it to the Baylift of some Franchise, the Sheriff shall be punished. See hic c. 24. Stat. de Mercatoribus; tamen vide Libr. Intrac. f. 595. c. *Lou sur Capias sur Stat. Merchant, le Vic. retorne,* Mandavi ballivo libertat. and also returned Tarde.

Quod distrinxit partem per frumemtum, vel per alia cattalla, ad quod non invenit emptores, *semble bon Retorne Fitz.* 133 *b.* *Aliter.*

Upon a Writ of Extendi facias, the Sheriff may return the special matter, sc. that he cannot make execution, for that another hath those lands in execution by force of an Elegit, &c. Or that another is in by discent, &c. for that they are not to be put out of possession, without a Scire facias, &c. Fitz. Ret. 112. & execution 97.

Upon a Writ of Execution upon a Statute Merchant, it hath been holden a good return, that the party hath no land, but only in ancient Demesne. 15 E. 3. Fitz. Ret. 109. Tamen quære inde; for by the book of 7 H. 7. fol. 10. Lands in ancient Demesne may be put in execution upon a Stat. Vide hic c. 26.

Upon an Extendi facias the Sheriff returneth that the Conusor is dead, and also an inquisition of the extent of the lands of the Conusor; but in the inquisition no certain estate is returned; but generally that the Conusor fuit seisitus die Recognitionis fact. de Maner. de B. without shewing of what estate; and this return was holden to be uncertain, insufficient and void; for that the word Seisitus, may be for life, or in Fee-tail, in which cases the land after the death of the Conusor is not extendable; and therefore in case where the death of the Conusor appeareth in the return, there of necessity his seisin must be found to be of an estate of Fee-simple only. Dyer 299.

Upon an Extendi fac upon a Statute Staple, the Sheriff extended the lands of the Defendant, and praised his goods, and seized them into the Kings hands, according to the Writ, (but delivered them not to the Conusee, which he needeth not to do until a Liberate cometh to him; yet he ought to have returned the extent and praisement.) And after a Writ of Prærog. came out of Exchequer, commanding the Sheriff to levy first 100 l. for the King, &c. And the Sheriff returned the special matter upon the Writ out of the Exchequer, &c. Et ideo nihil inde fecit, &c. And the Sheriff was therefore amerced, and was compelled to return the extent in the Exchequer for the Kings debt. Vide Dyer 67. & hic c. 25.

Upon an Extendi fac. upon a Statute Merchant, the Sheriff returned that he had extended the lands, but did not return that he had delivered them to the Plaintiff: whereupon it was moved that the Sheriff should be amerced. Fitz. Execution 38. & Fitz. Scire facias 117. & Fitz. Exec. 73.

CAP. 59.

Retorne de Exigent.

Exigent. Virtute istius brevis mihi directi, ad com. meum tent. apud castrum Cantab. in com. Cantab. infrascript. die Lunæ videlicet decimo die *J.* anno Regni Domini Regis infrascript. xix. infranominat. *J. C.* & cæteri defend. infranominat. (if there be above two) primo exacti fuer. & non comperuer. nec aliquis eorum comperuit, ad com. meum ibidem tent. die Lunæ videlicet vicesimo die A. anno supradict. prædictus *J. C.* & cæteri defend. infranominat. secundo exact. fuer. & non comperuer. nec aliquis eorum comperuit, Ad com. meum ibidem tent. die Lunæ videlicet decimo die *S.* anno prædict. prædict. *J. C.* & cæteri defend. infranominat. tertio exact. fuer. & non comperuer. nec aliquis eorum comperuit, Ad com. meum ibidem tent. videlicet duodecimo die *O.* anno prædict. prædictus *J. C.* & cæteri defend. infranominat. quarto exact. fuer. & non comperuer. nec aliquis eorum comperuit, Et ad com. meum ibidem tent. die Lunæ videlicet tertio die *N.* anno prædict. prædict. *J. C.* & cæteri defend. infranominat. quinto exact. fuer. & non comperuer. nec eorum aliquis comperuit, Ideo prædict. *J. C.* & (or name them all) cæteri defend. infranominat. per Judicium *J. W.* & *W. Ri.* gen. Coron. dicti Domini Regis com. prædict. secundum legem & consuet. Regni Domini nostri Regis Angliæ utlagat. sunt & quilibet eorum utlagat. est.

Aliter. Virtute istius brevis mihi direct', ad com. meum tentum apud *C.* in comitatu *C.* infrascripto, die Jovis, videlicet decimo die *J.* anno Regni Domini Regis infrascript. 19. *J. C.* infranominatus primo exactus fuit & non comperuit, Et ad com. meum, &c. (ut antea,) secundo exactus fuit & non comperuit, Et ad com. meum tent. &c. (ut antea) tertio exactus fuit, & non comperuit: Et ad com. meum tent. &c. (ut antea) quarto exactus fuit & non comperuit, Et ad com. meum, &c. (ut antea) quinto exactus fuit & non comperuit; Ideo prædict. *J. C.* per Judicium Coronatorum dicti Domini Regis comitatus prædicti, secundum legem & consuet. Regni Angliæ, utlagatus est, (or if it be a woman) waviata est. Vide Do. L. 122.

Upon the return of the Exigent, it must appear that it was per Judicium Coronatorum (for they be Judges of the Outlaries) otherwise it is error. 31 H. 7. fol. 33.

And the Judgment is, Ideo utlagatur per Judicium Coronatorum. Co. L. 288.

So note that he which is sued, if he do not appear upon the mean Proces, then upon the Exigent he shall be called (by the Sheriff) at five County Court days, to answer to the Law, and if he come not within that time, pro Exlege tenebitur (cum Principi non obediat, nec legi) & extunc utlagabitur.

And no County ought to be omitted, but when that the Proclamation beginneth, the Sheriff ought to persue the same at every County after without omission (auterment serra error) vide Plo. 371.

Mes le judgment serra pronouncę per le Coroner in le 5. County; & donque le Vic. dont faire retorne de ceo, &c.

Et si sur le Exigent le Vic. retorne quod non comperuit, sur ceo retorne le plt. avera un Capias utlagatum, vers le def. &c. Mes si le def. appear sur le Exigent,

Exigent, il doit aver Supersedeas, & donque le Plaintiff declarer vers luy, &c.

Et quant le Vic. ad Retorne le utlary, ove le Exigent in le Court que agard le Exigent donques ceo est bon utlary a touts intents. Fitz. 116.

Also the Return of an Exigent shall be void by reason of incertainty, as where the Sheriff returneth the Exigent, quod ad Comit. Lancaster. tent. ibidem, &c. where it should be, ad Comitat. Lancaster. tent. apud Lancast. (or at some other certain place, whereto Ibidem might have relation.) So the Sheriff returneth the Exigent thus. Ad Comit. tent. apud Castrum de Oxon, &c. And sets not down in what County.

So the Sheriff returneth Proclam. feci ad Com. tent. tali die, and shewed not what year. 27 H. 8. Br. Retor. 3.

Sur Exigent le Vic. retorne, quod al. 5. Hustings, &c. le defendant fuit demand, & ne appiert, & ne monstre in certein, in ceo Retorne, quant ceo 5. Husting. fuit tenus, ne in quel Lieu, per que le Retorne fuit adjudge d'estre male 39 H. 6. Fitz. Retor. 29. & Exigit. 11.

Un utlary fuit reverse per Curiam, quia sur le Exigent, le Vicount retorne ad Comit. meum tentum (a tiel Lieu, & jour, prox. post Petri *&* Pauli *Anno Regni, &c. Infranominatus* J. S. *primo exactus fuit, & non comperuit, &c.) Et ceo parol, festum, fuit interlesse.* Anno 30 Eliz. in Communi Banco.

Upon an Exigent the Sheriff returned, quod ad Comitat. tent. tali die, & ad tres Comit. prox. præcedentes prædictus D. def. exactus, non Comperuit, sed Manucaptus per J. C. ad salvand. ei Comit. illius ne utlag. promulgaretur in ipsum prout mos est, &c. This was disallowed, and the Sheriff amerced. Retor. 88. 14 E. 3. fol.

An Exigent is a Writ that lieth where the Defendant in an Action personal will not be found; nor hath any thing within the County whereby to be attached, or distreined: And it is directed to the Sheriff, to call and proclaim him in five County Court days, one after another, charg[ing] the Defendant to appear upon pain and danger to be Outlawed. Termes de Ley.

Exigenda est Conditio ejus qui quinquies in Comitat. aperto exactus, aut vocatus ad comparendum, non venit, Ideoq; Exlex propter contumaciam proclamari potest. Dr. *Cowell* Index.

Retorn' de breve de Exigend' cum Supersed.

VIrtute, &c. ad com. meum prædict. ibidem tentum die Jovis viz. 20. die A. anno prædict. prædictus J. C. quarto exact. fuit, & comperuit, & protulit mihi breve Domini Regis de Supersed', & est huic brevi annex' per quod ad executionem istius brevis ulterius faciend. Supersed. omnino, prout mihi in eodem brevi de Supersed. præcipitur. *Aliter cum Supersed.*

But where upon the Exigent the Sheriff returneth Reddit se, he must have the body in Court at the day of the Return of the Writ, or else he shall be amerced: Except that the party be so sick as he cannot, &c. Vide Lib. Intr. fol. 335. b. c.

Also you shall find the like Return in Dyer fol. 223. where the Sheriff returned, Quod comperuit al. 5. County & protulit Supersedeas, &c. Vide Libr. Intr. fol. 335. c. d. & 336. a. b.

And yet you shall find that the Sheriff hath been amerced for the like Return. Libro Intrac. titulo Exigent in Retorn div. 8. Where the Sheriff had made his Return. Ad Comitat. S. tent. apud G. tertio die, &c. An. &c. prædictus R. C. primo exactus fuit & comperuit, & protulit mihi breve Dom. Regis, de eodem R. ulterius non molestand. sive ulterius utlagandum.

lagandum, quod quidem breve, dicto brevi de exigi fac. Nihil actum est. Cujus quidem alterius brevis tenor sequitur in hæc verba. Henricus, &c. Vic. S. salutem. Cum (tali die &c.) per literas nostras Patentes, de gra. nostra speciali, de protectione Prærogativæ nostræ, suscepimus dilectum servientem nostrum R. C. unum. guarc. Cameræ nostræ in salvam gardian. protect' & defen' nostr. &c. (reciting the same at large.) Tibi præcipimus quod ipsum R. contra tenorem liter. nostrar. præd. non molestes in aliquo seu graves. Teste, &c. Et quia præd. Vic. executionem dicti brevis de exigend' non fecit: Sed de executione ejusdem prætextu prædicti alterius brevis Supersed. Ideo idem Vic. in misericordia, & le Vic. fit amerce per les Justic. ad 40 s.

Also upon an Exigent awarded, the Sheriff returned, *que le Roy luy mande per brief de Privy Seal, que il avoit luy pardon, &c. & command que ne soit endamage, &c. Et issint il ad rien fait per reason de ceo commandment le Roy, & retorna le brief le Roy, &c. Mes le Vic. fuit amerce, & novel Exigent agard.* 14 E. 3. Fitz. Retor. 89. Plus hic c. 21. 29.

An Exigent is awarded upon an Inditement, and the party findeth Sureties, and hath a Supersedeas; but he delivereth that not to the Sheriff; by reason whereof he was Outlawed; and after he offered the Supersedeas to the Sheriff, who refuseth the same; yet at the day of the return of the Exigent, if the party shall bring this Supersedeas into the Court, the Outlary shall be avoided thereby: But yet by not delivering of the Supersedeas to the Sheriff before, the party shall be Outlawed, his Goods seized, and himself discredited. Cromp. Inst. de p. 145. tit. Supersed.

And note that he which is sued, if he do not appear upon the mean Proces, &c. then upon the Exigent he shall be solemnly proclaimed, demanded, or called by the Sheriff at five several Counties, sc. from County to County, each one after another to appear, and to yield his body, and answer to the Law, or else that he shall be Outlawed. And if he cometh in at any of the five Counties, the Sheriff is to take and imprison him: But if he cometh not in within that time, then the Sheriff with the assistance of one Coroner (at the least) is to pronounce him Outlawed, sc. to pronounce him to be out of the Protection of the King and his Laws, Finch. 346. But the Judgment is to be given by the Coroner in the five Counties, and then the Sheriff is to return the same.

Retorne de Exigent ubi unus reddit se, & alii non comperuer'.

Virtute, &c. Ad com. meum ibidem tentum die Jovis, viz. 10. die A. anno prædict. prædict. J.C. & cæteri defend' infranominat. quinto exacti fuer' ad quem diem prædict. J. C. comperuit & se reddidit prison. Domini Regis castri sui Cantabr': cujus quidem corpus coram Justic. infrascr. ad diem & locum infracontent. parat. habeo prout interius mihi præcipitur; sed cæteri defend. infranominat. non comperuer. Ideo, &c. ut supra.

The Sheriff upon a Capias Utlag. may return that the party is in prison upon a Condemnation for Debt. Libr. Intr. 336. b.

Also the Sheriff may return that the party yielded himself to the old Sheriff, who hath not delivered him, &c. Ibid.

Languidus in prisona.

AD com. meum,&c. prædict. J. B. comparuit,& se reddidit prisonæ Dom. Regis castri sui C. infra com. prædict. & in eadem prisona modo remanet languidus, variis infirmitatibus detent. Ita quod propter corporis sui debilitat. & mortis periculum cariari non potest, & ea de causa corpus præd. J. B. coram Justic. infrascript' ad diem & locum infracontent. ad præsens haber. non possum juxta formam hujus brevis. Vide Fitz. F. tor. 94. *Le Vic. retorne que il aver prise l'un, mes que il ne poiet aver. luy la per malady, &c. quel retorne fuit allow.* & Libr. Intrac. fol. 335, 336.

Retorn' de Exigent ubi unus reddit se, alter profert Supersed. tertius mortuus est, &c.

VIrtute, &c. ad com. meum ibidem tent. die Jovis, viz. 10. die A. anno prædict. J. H. S. R. A. C. & D. P. quinto exact. fuer' & præd. S. R. se redd. prisonæ Dom. Regis castri sui Ca. in com. præd. cujus corpus coram Justiciar. infrascript. ad diem & locum infracontent. parat. habeo, ad faciend. id quod breve præd. in se exigit & requirit. Et præd. D. P. comparuit & protulit mihi breve Dom. Regis de Supersed' huic brevi annex. Ideo versus eum ulterius procedere non potui: Et præd. J. H. mortuus est: Et præd. A. C. waviat. est. Ideo per judicium J. W. & W. R. Coron. Dom. Regis præd. J. H. utlag. & præd. A. C waviat. est.

A. B. Ar' Vic'.

And yet upon an Exigent, the Sheriff returned that the party was dead, and it was doubted whether it were a good return: Br. 125. Vide libro Intrac. fol. 336. a. b. tiel Retorn.

And yet by other Authorities, such a Return is holden not to be good, but the Sheriff was amerced for such a Return; for that the Sheriff hath no authority by the Exigent, but to call the party from County to County, to appear, and answer to the Law; and if he appear, then to take him and imprison him, &c. (hic cap. 15.) *Et si un home in tiel case soit utlage, son heir poet assigne ceo* (sc. *quod mortuus fuit*) *pur Error.* Vide Fitz. h. Retor. 104. 106. & 121.

Also if after two or three Counties and Proclamations (and before the Return of the Exigent) the King shall happen to die; And in the next Kings time the rest of the Proclamations be made, and then the Sheriff returneth the party Quinto exactus upon the same Exigent; this is erroneous; for that by the Kings death the Writ did abate; and yet the Utlary is not void, but is Error—7 H. 7. 5.

Yet Quære, whether the Sheriff must not return this Quinto exactus, and that the party must after assign this for Error.

Retorna de Allocat.

ALlocat. illi quatuor com. ad quos infranominat. T. C. exact. fuit & non comparuit. Et ulterius virtute istius brevis ad com. meum tentum apud castrum Cantab. in com. C. infrascript. die Jovis, viz. Octavo die N. anno Regni Dom. Regis infrascript. Angliæ, &c. xix. prædict. T. quinto exact. fuit & non comparuit; Ideo per judicium coronator. &c. (ut supra) utlagat. est. Vide Fitz. Exigent 14. Br. Exigent 24. & Procl. 3. Plo. 371.

And if it be a woman, then thus: Ideo secundum legem & consuetudinem, &c. prædict. A. R. waiviata est.

If the Exigent be returned not fully served (without any fault in the Plt.) as where the Defendant after demand at two Counties, yields himself in Court, and getteth a Supersed. &c. If the Plaintiff brings a new Exigent, before any other County holden, he shall have the benefit of the former Counties; and therefore it is called Allocato Comit. Finch. 349 & 116.

Also an Outlary returned by the Sheriff upon an Infant (being above the age of fourteen years) is good. Hic cap. 36.

Retorn. de Exigent inter duos Vic'.

Virtute istius brevis mihi directi ad com' meum tent. apud castrum Cantabr' (in com. Cantabr' infrascript' die Jovis, viz. 10. die A. anno Regni Domini Regis Angliæ, &c. infrascript. xix. infranominat' R. K. primo exactus fuit & non comparuit: Istud breve sic superius indorsat' mihi deliberat. fuit, per J. C. Armig' nuper Vicecom. comitatus infrascript. proxim' prædecessorem meum in ejus exit. ab officio suo, ut superius in dorso hujus brevis. Et ad comitatum meum, &c.

Aliter. Istud breve prout indorsatur, mihi deliberat. fuit per A. R. Ar. nuper Vic. com. infrascript' proxim' prædecessor' meum in ejus exit. ab officio, Et ad com. meum tent. apud castrum C. prædict. in com. prædict. die Jovis, viz. 10. die D. anno prædict. prædictus R. K. secundo exact. fuit & non comparuit, &c. (ut supra.) Et si deficiunt Coron. ad com. ad reddend. judicium, tunc Vic. retorn. brevia sua sic, viz. Et quod ob defect. J. W. & W. R. Coron. Dom. Regis comitat. prædict. ulterius procedere non potui. And then upon this Return, the Coroners will be fined for every Writ, unless they can make a good excuse. *Pro defectu Coronator.*

A. B. Mil' Vic.

Aliter cum Supersedeas. Istud breve sic superius indorsat. una cum brevi dicti Domini Regis de Supersed. sibi annex. mihi liberat. fuit per A. B. nuper Vic. com. prædict. prox. prædecessor. meum.

Also the Sheriff may Return, that the Coroners were absent, sc. Quod ad tale Comit. J. M. & J. G. Coronator. Dom. Regis Com. præd. solemniter exacti non vener. Ideo ad execution. brevis præd. ob eorum defectum ulterius ibidem procedere non potuit.

Or he may return that no Coroner was there but one, who refused to pronounce the Outlary, Libr. Intrac. fol. 334, 335, & 336.

Pro defectu Coronat. Virtute, &c. Et ad com. meum tent' ibidem 3. die N. dicto Anno 20. Domini Regis infrascript', præd. T. C. quinto exactus fuit, & non comparuit, & pro defectu, W. B. & R. Coronator' com. prædict. ulterius inde prosequi non potui. Vide Fitz. Exigent 14.

Pro defectu Comitat. Virtute, &c. ad com. meum, &c. Et quod non fuerunt plures comitat. in com. prædict. tent. a die receptionis hujus brevis prædict. usque ad diem retorn. ejusdem, per quod nihil actum est ad præsens;
Vel sic, Et ideo in executione istius brevis ulterius faciend. nihil actum est. Vide lib. Intr. fol. 335. & hic cap. 54.

Upon an Indictment before Justices of Peace, if the Exigent shall be returned, quarto exactus, and that he cannot call the party any more

more for shortness of time, it seemeth to be a good return; And that an Exigi facias of new shall go out, without alledging the four Counties, &c. Cromp. 149, 150.

Retorna brevis de proclam. super exigent.

VIrtute istius brevis mihi directi, ad com. meum tent. apud castrum Cantabr. in com. C. infrascript' 21. die Martii anno 19. infrascript' primo proclam' feci. Et ad general. Session. pacis tent. apud Castrum Cantabr. præd. in Com. præd. 30. die Aprilis, An. 20. supradict. Secundo proclam. feci; Et ad maxime usuale Ostium Ecclesiæ de B. infrascript' super diem Dominicum sc. 10. diem Maii Anno Regni Domini Regis infrascpit. Angliæ, &c. 20. immediate post divinum servic', nulla prædicatio eadem Ecclesia adtunc ibidem existens, uno mense ad minus antequam infranomin' J. S. quinto exact' fuit, Tertio proclam' feci, Quod infranominat. J. S. se reddat mihi prout interius mihi præcipitur.

W. W. Mil' Vic'.

Virtute istius brevis mihi directi, ad com. meum tent' apud C. in com. C. infrascript' die Jovis 21. die M. anno Regni Domini Regis infrascript' 20. primo proclamari feci. Et ad generalem Sessionem pacis tent. apud C. in dicto C. (in partibus de M. infrascr.) die Jovis scilicet 3. die O. prædict. anno 20. Dom. Regis infrascript. Secundo proclam. feci. Et ad maxime usuale ostium, &c. (ut sup.) Tertio publice proclam. feci, Quod J. C. & cæteri omnes defendentes infranomin. se reddant infrascript' Vic. Ita q. idem Vic. habeat corpora eorum coram Justic' infrascript' ad diem & locum infracontent. prout istud breve in se exigit & requirit. *Aliter.*

Retor. Br. de bonis Restituendis apres Exigit.

ONe being Outlawed, sued a Writ of Error, and reversed the Outlary, and had a Writ to the Bayliff, de bonis restituendis (which were taken away from him when he was Outlawed, &c.) Here the Bayliff may not return (or plead) that he was not Bayliff; but he must answer, whether he had the goods, or no, and how they are divested out of his possession: Or else he must make deliverance thereof, if he cannot shew reasonable cause to the contrary. 6 H. 7. 9. Fitz. Ret. 36.

Un Proctor fuit utlage, & apres le utlary fuit reverse, & un brief de Restitution fuit agard al Vic. pro bonis Restituendis (que fuer. al value de 100 l. *Le Vic. retorne que il aver vend les biens pur* 40 l. *& protulit precium inde in Curiam; Mes le retorne fuit tenus insufficient, Car le brief de Capias utlagatum, &c. ne garrant le Vic.* vendition. exponere; *uncore* 3. *Justices doubta, Car le brief est,* in manus nostras Capias, Ita quod de vero valore & exitibus eorum nobis respondeas, &c. *Issint semble al eux, que le Vic. poiet vender eux. Et responder le value al Roy, & reteiner les biens luy mesme, &c.* Dyer 223. *Sed vide* Co. 5. 90. b. & 8. 143. *Que si le utlary soit apres reverse, la def. avera Restitution de ses biens.* Vide hic cap. 15.

And so note that (upon the Kings Writ) the Sheriff in some Cases may seize goods (to the Kings use) and may keep them, but may not safely sell them, as here before in Case of Outlary.

In some cases the Sheriff may seize the goods, and may and ought to sell them; as upon a Fieri fac. See hic cap. 30.]

CAP. 60.

Retorna Brevis de falso Judicio.

QUe est in Natur. de Accedas ad Curiam; Ou de Recordare. Fitz. 444.

Virtute istius brevis; assumptis mec. J. W. &c. Quatuor discret. & legal. milit. (or hominibus) de balliva mea, in propria persona mea accessi ad Curiam Caroli Regis Angliæ de O. tent. apud, &c. (tali die & Anno) & in plena Curia illa Recordari feci loquelam, unde infra fit mentio: Et record. illud habeo coram Justic. infraspec. ad diem infracontent, quod huic brevi est consut. sub sigillo meo & sigillis W. C. D. & E. quatuor legal. homin. (ejusdem Comit. ex illis) qui recordo ill. interfuer. Libr. Intrac. fol. 343.

And the Sheriff must return the names of the four Knights of the County, ut supra. Liber Intrac.

Falso Judicio. Virtute istius brevis (assumptis mecum, P. M. quatuor legalibus milit' de com. meo) in propria persona mea accessi ad curiam E. tent apud N. (tali die & anno.) Et in plena curia ibidem ab A. B. &c. sectator' ejusdem curiæ, & R. H. Senesch' ibid', petii Recordum loquelæ q. est in eadem curia, per parvum breve Dom. Regis de Recto, inter J. P. petent' & N. S. tenent' fieri, & mihi liber. Qui quidem Seneschallus, & Sectator' Recordum illud inde mihi liberare noluerunt, ob quod execut' dicti brevis minime facere potui. 11 H. 4. fol. 23.

This Writ lieth where false Judgment is given in the County (or other Court Baron) and is to cause the Record to come before the Justices in Banco, &c. And therefore upon this Writ, the Sheriff is to repair to the Lords Court, or Hundred Court, &c. in the Writ mentioned, and is there to require of the Lord and Steward to have the sight of the Plea (or of the Suit there depending) in the Writ also mentioned; And in full Court (before the Suitors) the Sheriff is to Record the same Plea, and then he is to return the same; and withall he is to warn or Return the Defendant to be before the Justices at the day prefixed, &c. See hic cap. 48.

Also upon the Writ of false Judgment, which is an Accedas ad curiam, the Sheriff must take with him four men; but it is not needful that they be Knights, Fitz. 18. c. Fitz. 18. c.

This Writ must be returned under the Seal of the Sheriff, and the Seals of four of the Suitors of the same Court. Ibid.

In this Writ, it is a good return for the Sheriff to say, that after the receit of the Writ, and before the return thereof, no Court was holden, so as he could not execute the Writ, &c. Fitz. Retor. 21. Ibid.

Also it is a good return (in the Writ) that the Sheriff hath required the Lord to hold his Court, and the Lord would not, so as he could not execute the Writ: And upon such return the Justices will award a Distress

stress directed to the Sheriff, to distrain the Lord to hold his Court. Fitz. Retor. 21. Vide Libr. Intr. fol. 342.

The Sheriff returned that he had been at the Court, and that the Suitors would not Record the Plea. Fitz. faux Judgment 6. 8. 21. Process 167. & Dyer 262.

Upon this Writ, although the Plaint or Suit be determined, yet the Sheriff is to make Execution of the Writ, &c. he is to require the sight of the Plea, and to Record the same, and to return the same Record together with the Writ. Vide Dyer 268.

The Sheriff returned that he came to the Court to Record the Plea, and that the Suitors said that there was no such Plea, &c. Fitz. faux Judgm. 13. Nat. Br. 16.

Or that the Suitors would not deliver him any Record. Fitz. Process 128.

Or that the Suitors would not deliver him the Record, nor suffer him to have it. Fitz. Recordar. 7. Libr. & Intr. 342, 343.

Fitz. 19. c. In this Writ, if the Sheriff returneth, Quod breve adeo tarde venit, quod executionem ejusdem facere non potuit, this is a good return: and upon such return the party may have a Sicut alias directed to the Sheriff; and if the Sheriff doth not return this at the day, then shall the party have a Pluries directed to the same Sheriff, &c. Libr. Intrac. fol. 345. d. *Tarde.*

Also in this Writ, if the Sheriff returneth that he went to the said Court of, &c. and there prayed the Lord to hold his Court, that so he might make execution of this Writ, and that the Lord refused to hold his Court, &c. by reason whereof he could not do execution of this Writ, then a Distress shall be directed to the Sheriff out of the Court of Common Pleas, commanding him to distrain the Lord to hold his Court at a certain day to be limited him by the Sheriff; and that the Sheriff taking with him four discreet Knights, &c. of the County, &c. shall come to the same Court, &c. and that he return the same such a
Vi. Fitz. 19. c. day, &c. and also that he have then and there the said Record, &c. and that he Summon the aforesaid Lord that he be there to hear the same Record, &c.

Upon a Writ of false Judgment (of a Judgment given in the Court at Godmanchester, which is a parcel of the Dutchy of Lancaster) the Sheriff came thither to the Court; but the Suitors there refused to make a Record, but would thereof deliberate, &c. And in the mean time an Injunction was sued out of the Dutchy, directed to the Plaintiff, his Counsellors and Attorneys, and also to the Sheriff, to surcease to persue, or make Execution, or Return of the Writ, Sub pœna 200 l. And yet the Sheriff (notwithstanding) returned the Writ, ut supra; and in his Return he named (by their proper names) all the Suitors which refused to make the Record (who were seven in number. And upon this Return a Distring. Sectator. issued out against those seven only, &c. And those Suitors were amerced by the Justices, &c. Dyer 262, 263.

Also upon a Writ of false Judgment, directed to the Sheriff of, &c. the Sheriff returned, that the Steward, the Bayliff, and four Suitors (naming all their names) were present in the Court when the Sheriff came to return the Plea, and required the sight or view thereof, and that the Steward and the Bayliff denied him, &c. (Omitting the Suitors;) *Et sur ceo un Distress fuit agard al Vic. tantum*

vers les 4 Suitors, ove un Summons vers le party, &c. Et apres le brief fuit retorne service, Et le Record. port eins per les 4 Suitors tantum, al Common Place, *& enter, sed Nihil amplius actum erat.* Dyer 268.

Nota que le brief de faux Judgment serra re. fa. lo. que fuit in eadem Curia, & nemy que est in eadem Cur. Car loquela est determin. sur le Judgment. Dyer ibid.

Sur brief de faux Judgment, sur faux Judgment, &c. done in Court, le Vic. doit recorder ceo, & d'aver in Banco. Finch. 117.

Et nota que cest brief de faux Judgment extend auxi bien as brief du Droit queux sont pleadables in County, ou in Court Baron, Come la ou le parol est en County ou in Court Baron, sans brief. N. Br. 60.

Auxi ceo brief gist, l'ou faux judgment est done per le Vic. in son County Court sur un Justicies direct a luy a tener plea. Ibid.

Mes pur faux Judgment done in le County Court. Vide le Retorne de ceo. Br. hic tit. Recordare, &c. cap. 72.

CAP. 61.

Retorn. de fieri feci sur Fieri fac'.

Fieri fac. Virtute istius brevis mihi directi, fieri feci de bonis & catallis infranominat. J. H. quandem dimissionem & concessionem eidem, J. H. per quandam T. G. gen. per Indentur' suam fact'. Vide hic antea, cap. 28. that this recital is needless, (pro termino 31 annor. incipiend' à primo die Julii anno, &c. infrascript' prout per Indenturam illam geren' dat' eisdem die & anno plenius liquet & apparet) de & in uno messuagio sive firma cum pertinentiis scituat' jacen' & existent' in L. in Parochia de F. infra ballivam meam, vocat' sive cog' per nomen de B. simul cum omnibus & singulis terr' pratis, pascuis, boscis, subboscis, aquis & pasturis, cum omnibus suis pertinentiis, scituat' jacen' & existen' infra villam, parochiam & Campos de F. præd. & O. scilicet in balliva mea. Et præd. dimissionem, ac omne & totum jus stat' titulum termin' annor' possessionem & demand. quæ præd. J. H. modo habet, de & in prædict. præmissis, virtute sive vigore ejusdem dimissionis & concessionis, aut aliter, condition' exposui & vendidi cuidam P. H. gen' pro sum' 76 *l.* 13 *s.* 4 *d.* Ac etiam fieri feci de aliis bonis & catallis prædict' J. H. ad valent. 65 *l.* 6 *s.* 8 *d.* quas quidem denariorum summas, sic in forma præd. per me levat', in toto sc. attingunt ad summam 132 *l.* 12 *d.* Et easdem summas coram Domino Rege ad diem & locum infracontent' parat' habeo ad reddend. infranom'. E. P. & J. uxori ejus in parte satisfact' dampnorum infrascript. prout per breve istud interius mihi præcipitur. Et q. prædict. J. H. nulla alia sive plura bona aut catal. in balliva mea habuit, unde resid. prædict. debit. 145 *l.* 6 *s.* 2 d. fieri sive possum secundum exigent' hujus brevis.

A. B. Ar. Vic.

Aliter. Virtute istius brevis mihi directi fieri feci infrascript. 10 *l.* de bonis & catallis infrascript. R. W. Quas quidem 10 *l.* coram Justic. infrascript. ad diem & locum infracontent. parat. habeo, prout istud breve in se exigit & requirit.

Virtute

Virtute istius brevis mihi directi de bonis & catallis infranom. T. E. fieri feci debitum & dampna infrascript. & denarios illos habeo coram Domino Rege infrascript. ad diem & locum infracont. prout interius mihi præcipitur. *Aliter.*

Virtute, &c. fieri feci C s. de bon. & catall. infranominat. W. H. quos quidem C s. coram Justic. infrascript. ad diem & locum infracontent. parat. habeo prout, &c. Et ulterius eisdem Justic. certifico q. executor. infrascript. bona & catalla infranominat. W. H. testat. penit. devastaver. sic quod summam x. marcarum infrascript. nec aliquam inde parcellam fieri facere non possum. *Aliter sur devast.*

In an action of debt against Executors who pleaded that they had fully administred, it was found by the Jury, that they had assets remaining, whereupon a Fieri fac. was awarded to the Sheriff, &c. And the Sheriff thereupon returned, quod mandavi ballivo libertatis, &c. Qui mihi dedit responsum, quod executores non habent aliqua bona testatoris, which return being contrary to the verdict of the Jury, was holden not to be good, and the Sheriff was therefore amerced; for he should or might have returned quod Elongaver. or Devastaver. 5 H. 7. fol. 27. Fitz. Ret. 35.

So if the Executors have wasted the goods of the Testator, or have imployed the same to their own use, the Sheriff upon the Fieri fac. may return a Devastaverunt.

But if the Executors have sold the goods of the Testator, and taken money (or other goods) for the same, the Sheriff upon the Fieri fac. is to take other goods of the Executors, to the value of the goods so sold. 14 H. 4. Fitz. Ret. 55.

If all the Executors, save one, have nothing of the Testators, yet upon the Fieri fac. the Sheriff is to make execution of that which is in the hands of that one Executor. Ibid.

The Sheriff returned that the Executors Non habent aliqua bona testatoris in balliva sua Administ. post receptionem brevis. Fitz. Exec. 9.

The Sheriff returned that the Executors had no goods of the Defend. Fitz. Exec. 73.

But if the Sheriff (upon a Fieri fac. against Executors) returneth that the Executors had sold the goods; or that all the Executors but one had nothing: these are no goods returns: See hic c. 36.

Upon a Fieri fac. for damages recovered, the Sheriff returned that after the Recovery, and before that this Writ came to him, the Defendant (in the original) by Covin had given all his goods to divers persons unknown, to the intent to defraud the Plaintiff of his Recovery, this return was holden not to be good, and the Sheriff was amerced for the same, for that the Sheriff is to take knowledge what things he may do by the Law; and this gift or alienation of the goods being void, the Sheriff ought to have made execution thereof, notwithstanding such gift or alienation. 3 H. 6. Fitz. Ret 5.

Where there be divers of one Name.

Justic. infrascr. certifico quod sunt diversæ personæ in Comitat. meo Nominis & cognominis de J. S. viz. J. S. de B. J. S. de C. & J. S. de W. & quod non continetur in isto brevi de cujus prædictor. J. S. bonis & catallis denar. infraspec. fieri facere. Ideo ad executionem istius brevis procedere non potui.

Virtute, &c. fieri feci de bonis & catall. terr. & tenementis infranominat. R. B. ad valenc. CC l. & illa de die in diem vendition. exposui, & inde *Aliter.*

vendidi

vendidi ad valenc. C l. Quas quidem centum libr. ad diem & locum infracontent. parat. habeo, ad reddend. infranominat. J. W. prout interius mihi præcipitur, & resid. bonorum & cattalorum præd. adhuc penes me remanent. invendit. ob defect. emptorum.

A. B. Ar' Vic.

Virtute istius brevis, cepi bona & catalla A. W. infraspec. ad valenc. omnium denariorum infrascript. Et illa venditioni exposui, ad quod nondum inveni emptores, Et Ideo denarios infraspecificat. habere non possum ad diem & locum infracontent. prout mihi præcipitur.

Vide Dyer 98. *Sur Fieri fac. le Vic. retorne, quod cepit bona & Catalla def. al value del part del debt, & quod rem. in Custodia sua pro defectu emptorum*; *Et coment fuit object. que le execution ne fuit servie, ne les property del biens altred nient obstant le seisure, uncore sur ceo retorne, un brief de venditioni exponas fuit agard.*

Sur Fieri fac. le Vic. retorne que il avoit mande al Baily del Franch. &c. que luy respond. quod cepit bona, &c. ad quod non invenit emptores. Fitz. Execution 101.

Aliter. Virtute, &c. cepi bona & catall' infrascript' *A. W.* ad valentiam 4 l. de infrascript' Octo libris, quæ bona & catalla penes me remanent invendita pro defectu emptorum, quodque prædict' *A. W.* nulla alia neque plura bona seu catalla, nec aliqua terr' seu tenement' habet in balliva mea unde residuum prædict' octo librar', seu aliquam inde parcellam, ad præsens fieri facere possum.

Aliter. Adhuc illa bona & catalla, quæ nuper de bonis & catall', firmat. occupat. & tenement. manerii de W. ad valentiam, x l. in manus Domini Regis cepi, pro defectu emptorum remanent invendita. Sed de die in diem venditioni expon. & de denariis inde provenient. quam citius potero, vobis respondebo.

Aliter. Virtute, &c. vendidi bona & catalla infrascripta per me prius capta, Ac etiam fieri feci de bonis & catallis *R. S.* infranominati residuum debiti infracontenti, Ita quod omnes denarios illos paratos habeo coram Domino Rege ad diem & locum infracontent. infranominat. *H. W.* solvend. prout interius mihi præcipitur.

Supersed. Quod fieri faciend. denarios infrascript. virtute cujusdam brevis Domini Regis de Supersed. mihi directi omnino supersed. quod quidem breve de Supersed. huic brevi annex. vobis mitto; Et ulterius certifico, q. dictus, *J. C.* non aliqua alia vel plura bona seu catalla, terras seu tenementa in eadem balliva mea habet, unde denarii aliqui ad præsens levari possum. &c. Vide Dyer 9.

Upon a Fieri fac. for the debt, and a Capias ad satisfac. for the damages, the Sheriff returned, quod nulla habent bona neque catalla in balliva mea, unde infrascript. 15 *l.* (ou debit. & dampna) aut aliquam inde parcell. fieri facere possum, Nec sunt invent. in eadem. Vide Librum Intr. tit. Error in exception, div. 1.

Upon a Fieri fac. the Sheriff returneth quod nihil habet, this is not good, without saying further, nec habuit post receptionem brevis. 39 H. 6. Fitz. Ret. 30.

Aliter sur nihil habet.

Nihil. INfranominatus *R. B.* Miles nulla habet bona seu catalla, terr. aut tenementa in balliva mea unde denar. infraspec. fieri facere possum, prout interius mihi præcipitur. *Aliter.*

M. B. Ar' Vic'.

Infranom. *R. B.* nulla habet bona, &c. de quibus denarios infraspec. aut aliquam inde parcellam possum levare, prout interius mihi præcipitur.

Infranom. *R. B.* Nihil habet in balliva mea, unde debitum & dampna infrascript. aut aliquem inde denarium fieri facere possum, secundum exigenciam hujus brevis.

Note that upon a Fieri fac. if it be duly executed, and the Plaintiff satisfied, then the Sheriff needeth not to return the Writ. See hic c. 38.

Also upon a Fieri fac. the Sheriff may sell a Lease for years, and yet never make any mention thereof in his return, but to return generally, Quod fieri fecit de bonis & catallis, &c. Co. 4. 74. b.

Upon a Fieri fac against J. S. who dieth (before execution) the Sheriff may levy the execution of the Executors or Administrators. J. J. S. Dyer 76.

A. M. Infrascriptus nulla habet bona seu catalla infra ballivam meam de quibus executionem istius brevis facere possum, prout, &c. nec aliqua terr. seu tenementa habuit infra eandem quinto die J. nec unquam postea, prout patet in quadam schedula huic brevi consut. *Aliter.*

And yet where there is found Assets by a Jury, there, upon a Fieri fac. directed to the Sheriff, he cannot return a Nihil habet, &c. contrary to the Verdict of the Jury: See hic fol. præced.

Also if the Sheriff, upon a Fieri fac. shall return, quod non habet aliqua bona in balliva sua, &c. prout ei aliquo modo constare poterit, this is not good; But he must return directly quod nihil habet, or non habet aliqua bona in balliva sua. 9 H. 6. Fitz. Ret. 9. Br. Ret.

Restitutio sur Fieri fac.

J. G. & alii infranominat. nihil habent, nec eorum aliquis nihil habet in balliva mea; unde restitutio bonorum & catal. infrascript. infranominat. *W. M.* habere facere potui, Nec non 24 l. infrascript. eidem *W. M.* Fieri facere potui prout, &c.

Retorne de Formedon.

Plegii de prosequendo { *J. D.* / *R. R.* }

Summonitores { *J. H.* / *T. S.* }

A. B Ar' Vic.

Sur un Formed. le Vic. poet retorne tarde, &c. Mes donque si le demand' sue un Alias summons, la doient estre 9. retornes perenter le teste, & le retorne de ceo. Dyer 252.

In

Formedon. In a Formedon, the Sheriff returneth, quod nihil habet, &c. nec est inventus, &c. this is no good return; for in this Writ the Sheriff may summon him in (or upon) the land demanded, whether he be tenant thereof or no. Br. 67.

Forrest.

Quant le Roy voile faire un Forrest, un brief issuer. al. Vic. de mesme le County ou le Forrest serra, de enquirer quel lieu est necessary de faire Forrest; Et sur ceo le Vic. prender enquest, & enquirer del content de lieu, & del bounds, & mesme le bounds mitter a un certainty; & tout cel il doit retorne in le Chancery. Et quant le Roy est de cel ascertained per tiel matter de record, le Roy maunder al Vic. per ses Letters Patents, que ferra Proclamation que le lieu que il ad retorne serra en apres un Forrest. Cromp. author. des Courts 146.

CAP. 62.

Retorne in Garranty des Charters.

In a Writ *de Garranty des Charters*, Nihil is a good return. 10 H. 6. f. 12. Fitz. Ret. 12. Proces 26.

Nota que le Proces in ceo brief est Summons, Attachment, & Distress infinite tanque le party veigne. N. Br. 156. *Et sur chescun de eux le Vic. poiet retorne come devant queux ters serront liable in cest brief.* Vide Co. L. 102.]

Retorne in brief de Gard.

Here the Defendant is to be summoned. Fitz. Procla. 5.

In this Writ, Nihil may also be returned (upon the Defendants.) Br. Ret. 101. Fitz. Proces 26. 47. Procla. 5.

The Sheriff may return that the Cust is in another County. Fitz. Proces 164.

The Sheriff returned that he could not make Proclamation, for that the Writ came so late. Fitz. Procla. 1.

Upon the Distress with Proclamation the Sheriff returned that as to the Distress Mandavit ballivo libertatis; and as to the Proclamation that he made it himself; this is not good. Vide 21 H. 7. 14. Mes Fitz. Ret. 41. contra.

Retorne de Distress, & del Proclam. in brief de droit de Gard.

Quod præd. def. districti. sunt per catalla ad valenc. 2 s. *Et manucapt. per J. M. & R. F.* Et ulterius quod in pleno Comitatu suo tent. apud C. (tali die & Anno) Et sic ad duos Comitat. C. tunc prox. precedent. apud castrum C. præd. tent. Proclamari fecit, Quod præd. def. essent coram Justic. &c. ad respondend. prout breve illud exigit & requirit. Libr. Inter. fol. 388. b.

Retorne de Grand Cape.

Ceo Grand Cape issuer quant ascun action real est port, & le tenant ne appear, mes fait default al primer summons: Et pur cel default le tenant perder le ter. &c. Termes del Ley. Vide Fitz. 86. & Old Nat. 177. Br. 177.

Virtute istius brevis 10. die M. anno infrascript. per visum *R.H.* & *T.H.* probornm & legalium hominum de com. meo, cepi in manus Domini Regis, terras infrascript. prout interius mihi præcipitur. *Grand Cape.*

Summon. *J. D. R. F.*

Infra libertatem. **And if this Writ be directed to the Sheriff, and the place where it ought to be executed be within a Franchise, which hath full return of all Writs, then it must be thus.**

Executio istius brevis patet in quadam scedula huic brevi annex.

Ego *A. B.* Vicecom. com. Cantab. Mandavi *J. W* ballivo libertatis de *R.* in com. prædict. qui habet plenum retorn. omnium brevium, & executionem eorundem infra libertatem prædict. in com. prædict. Et ad quem execut. istius brevis totaliter pertinet faciend pro eo quo dicta executio inde alibi in balliva mea extra dictam libertatem fieri non potuit, qui mihi sic respondet, &c. *Schedula.*

Virtute, &c. cepi in manus Domini Regis per visum *R. H.* & *T. H.* probor. & legalium homin. de com. meo, de terris & tenement. *J. M.* infranominat. ad valenc' * unius Messuagii, &c. ut in brevi infracontent. (tali die & anno) juxta formam hujus brevis (vel, prout interius mihi præcipitur, vel prout istud breve in se exigit & requirit) *Aliter.*

vel * Tertiam partem messuagiorum, gardinorum, & cæterorum præmissorum, prout interius mihi præcipitur. *Aliter.*

Virtute istius brevis cepi in manus Domini Regis tali die & Anno, &c. Omn. terras & tenementa, redditus & servic. cum pertin. suis, in breve isto specificat. secundum formam hujus brevis, per visum *T. W. E. B.* & *F. C.* proborum & legalium hominum de balliva mea, prout interius mihi præcipitur. *Aliter.*

Note that in this Writ de Grand Cape, **the Sheriff hath two things in command,** sc. *de prender le terr. in mains le Roy, & de Summoner le tenant.* Fitz. Amerc. 1. **And yet by some upon these words** Cape in manum nostram, **are but form and void, and the Sheriff ought not to seize the lands into the Kings hands by force thereof.** Kiel. 117. tamen' vide hic c. 11. contra sc. *que le Vic. seisser le ter. & serra accomptable pur les issues del dit ter. vel temps del default tanque judgment pur le demandant,* vide Stamf. Prerog. 84. & Finch. 86. b. accordant.

Upon the Grand Cape, **the Sheriff must summon the Tenant, to answer to his default, and further to answer to the demand.**

Also the Sheriff ought to return the names of the Summoners and Vewors. Br. Ret. 86. N. Br. 178.

Upon this Writ the Sheriff returneth that the party hath nothing, per quod summoniri potest; **this is a good Return.** Fitz. Ret. 10. Br. Ret. 7. *Nihil.*

Upon this Writ, the Sheriff returneth quod nullus venit ex parte quer. ad ostendend. mihi terr. Et ideo non potui terr. Capere, &c. Quære **whether this be a good Return: But if the same Sheriff made the summons before, then he cannot after make this Return.** 12 H. 4. & 13 H. 4. Fitz. Ret. 54. & 103.

Upon this Writ the Sheriff may return that there is no such Town, etc. Fitz. Sav. deft 73.

Now this cape in manus seemeth only upon the default of the Tenant.

Note that the Grand Cape must be served (sc. the lands must be seized into the Kings hands) fifteen days before the day of the return, sc. before the primo die, &c. Br. Grand Cape 29.

Upon the Grand Cape, the Sheriff must return the Summoners and Veyors, Kitch. Ret. 44.

The Sheriff may return Mandavi ballivo libertatis, &c. Libr. Intr. fol. 399. b.

He may return virtute,&c. 3. die & Anno,&c. Cepi in manum Domini Regis duos solidat. reddit. infrascript. per visum *K.* & *J.* legalium hominum com. præd. prout interius mihi præcipitur. Ibid.

Sur Grand Cape le Tenant poict saver son default, adire que il ne fuit summon solonque le Ley; Ou que il fuit en prison; ou disturbe per certein inundation de ewe, &c. Finch. 86.

Le Grand Cape issuer (in Real Præcipes, lou un Freehold est d'estre recover) sur default a le summons retorne, & devant appearance.

Le Petit Cape issuer (in Præcipe lou Franktenement est d'estre recover) sur default apres appearance. Fitz. 87. Old Na. Br. 178.

Le Grand Cape, & Petit Cape, semble en touts choses d'estre de mesme le natures avant que en Petit Cape le Tenant est de responder al son default tantum, lou en Grand Cape il est de responder al demand auxi. Fitz. 438.

Mes le Petit Cape issuer, lou in plea de terr. le tenant est summon, & appear, & apres il fist default al auter jour done (sc. apres plea, issue, ou demurrer.) Fitz. 87. Old Na. Br. 178.

Sic nota que le Grand Cape issuer sur default devant appearance: Et le Petit Cape issuer sur default apres appearance. N. Br. 178.

CAP. 63.

Retorn' del Habeas Corpus, & corpus cum causa: see hic antea, corpus cum causa, cap. 55.

Habeas corpus. Virtute istius brevis vobis certifico, quod ante adventum istius brevis, virtute alterius brevis mihi prius directi, A. B. infrascriptus in prisona Castri Domini Regis de Cantabr. extit', ac ibidem languidus & infirmus jacebat, & in eadem prisona adhuc languidus & infirmus jacet, ita quod ipsum ob mortis metum cariare non possum; ideo corpus dicti A. B. ad diem infracontent' habere non possum, &c. Libr. Intr. 190. c. *Languidus.*

Aliter. Languidus. Justic' Domini Regis certifico, quod infranominat. J. B. adeo languidus in prisona Domini Regis Castri sui Cantabr. in comit. C. variis infirmitat. detent. ita quod propter corporis sui debilitat. & mortis periculum, ipsum tute removere non possum. Ideo corpus ejus coram Justic. infrascript. ad diem & locum infracontent. ad præsens habere non possum, juxta formam hujus brevis. Vide Libr. Intr. fol. 400. d.

A. B. Ar' Vic.

Habeas corpus est pur home endite de trespass devant Justices de Peace (ou in ascun Court d' ascun Franchise) & imprison, a remover luy in Bank le Roys Fitz. 250. h.

Corpus

Corpus cum causa est pur home condemn in ascun court pur debt & son corps mise in execution, de remover luy, sc. son corps, & le record. Fitz. 251. e.

No Writ of Habeas Corpus shall be granted to remove any prisoner out of any Gaol, except the same Writ be signed with the proper hand of the Chief Justice, or (in his absence) of one of the Justices of the Court, out of which the same Writ shall be awarded, 1 & 2 Ph. & Ma. cap. 14.

By the new Act of Parliament made in 30 Car. 2. a Judge at his Chamber may grant a Habeas Corpus Returnable immediate in Vacation-time, except it be where the party is committed for Treason or Felony.

Upon a Habeas Corpus, or Corpus cum Causa, it is a good Return, that the party is dead. Br. Ret. 125.

Domino Regi certifico, quod J. S. infrascript. non detent. existit in prisona sub custodia mea; Nec fuit die receptionis hujus brevis, Nec aliqua causa detentionis ipsius J. penes me residet; Et ideo corpus ipsius J. & causam detenc. illius coram Domino Rege ad diem & locum infracontent. habere non possum, prout interius mihi præcipitur. Libr. Intr. fol. 472. d.

In these Writs there be divers other manner of Returns, and divers of them are in manner following:

Virtute istius brevis vobis certifico, quod ante adventum istius brevis W. B. infrascript. captus fuit in alio loco, & prison. Domini Regis de N. commissus, virtute cujusdam alterius brevis mihi prius directi, cujus transcriptum vobis mitto huic brevi consut': Attamen corpus ipsius W. coram vobis habeo ad diem & locum infracontent', prout mihi interius præcipitur, &c. *Aliter. In prisona.*

Nos Vic' præd. vobis significamus, quod ante adventum istius brevis Domini Regis nobis directi, & huic brevi consut', J. F. de T. in dicto brevi nominat' captus fuit in tali loco, & prisona Domini Regis de C. commissus, pro 20 l. de dampnis adjudicat. T. C. de N. in placito trns. in cur' Domini Regis in dicta civitate C. coram nobis dict. Vic' tent'. Et similiter idem *Jo.* detentus est in prisona præd. ad sectam W. S. in placito trns. coram nobis dict. Vic' in cur' præd. habita & prosecut': Attamen corpus &c. (ut in prox' returna ante, &c.) *For Trespass.*

Virtute istius brevis vobis significo, quod ante advent' ejusd' brevis Domini Regis R. A. in dicto brevi nominat. capt. fuit in L. & prisonæ Domini Regis de C. pro suspectione communis latronis commiss'. Et ulterius idem R. detentus fuit in eadem prisona, pro eo quod ipse pro diversis feloniis per ipsum factis & perpetrat' apud D. in Hundr . de A. indictatus est, ut informatus sum; Et alia vice captus armatus apud J. in com. (tali) duct. fuit prisonæ Domini Regis, dictusq; A. eandem prisonam Domini Regis felonicè fregit & ab ea recessit ut dicitur, Attamen corpus ipsius R. (ut supra, &c.) *For Felony.*

Virtute, &c. vobis certifico quod ante adventum ejusdem brevis A. W. infranomin. per censuram Ecclesiasticam, in Ecclesia de N. (tali die & anno, &c.) propter suam contumac. (vel similia) excommunicatus existit; ipseq; A. per ordinarios Sancti Martini Ecclesiæ institut' in præmiss. adhuc restat in eadem cur' Excommunicatus; Et hæc est causa captionis & detentions præd' A. attamen corpus ipsius A. W. coram Domino Rege ad diem & locum infracontent. ubicunq; fuerit, habeo parat. prout, &c. *Excom*

Ante advent' istius brevis C. D. infrascript. fuit in tali loco & prison. Dom' Regis de R. commiss. pro suspectione contrafaction' monetæ Regis, & ea de causa, & non alia, in eadem prisona detentus est. Attamen ipsum C. D. coram vobis, ad diem & locum infracontent. parat. habeo, prout mihi interius præcipit'. *Counterfeit. moneta.*

Murder. A. B. captus fuit apud D. in com. E. per H. S. senefchallum T. F. & cor' præfat' senefchall' Hundred' tent. &c. indictatus fuit pro morte J.T. per prædict. B. occisum, & per præf. senefchall' missus fuit prisonæ Domini Regis de R. quod quidem indictament' reman. cum præf. senefchall' attamen corpus ipsius B. coram Dom. Rege in Cancell' sua ad diem in brevi isto content. ubicunque fuer', &c. habeo parat. prout istud breve in se exigit & requirit, &c.

Sequuntur hic diversæ causæ super return' hujus brevis corpus cum causa inferend', &c.

Si necesse fuerit causa captionis, & detention' A. B. *de* D. *infrascript. hic subsequitur.*

Felonies. A. De B. captus est pro suspitione latrocinii, & quia non potest invenire sufficient. secur' ad Legem Domini Regis expectand. prisonæ Domini Regis de B. commiss. fuit, & ea de causa detinetur: Attamen corpus dicti A. coram vobis, &c.

Account. W. D. infrascriptus captus fuit ante adventum istius brevis (in tali loco) & in prisona Domini Regis ibidem sub mea custod' detent' prætextu cujusdam querelæ in curia Domini Regis ibid. coram me præf. Vic. super ipsum per nomen W. &c. ad sectam (talis) in placito compoti affirmat. unde in eadem cur' coram me dict. Vic. partes præd. placita ver. & posuer. se super Jurat. patriæ in eadem cur. Et postea dictus W. de D. super suffic. manucap. ad respond. præfat. (tali) de placito præd. dimiss. fuit ad largum à prisona prædict. Et quia dictus W. post manucapt. prædict. ad judicium non reven. custod. corpus ejus ad diem & locum infracontent. habere non possum.

Aliter. Ante adventum istius brevis A. H. & S. Auditores compotorum W. de B. mihi per indent. deliberaver. corpus R. S. infrascript. salvo & secure custodiend. quousq; satisfec. W. de B. de 200 *l.* arrer. super finem compoti R. S. per dictos Auditores invent. &c. Et hæc est causa captionis & detention. ipsius R. S. Attamen corpus, &c.

Treason. Infrascript. J. C. appellatus fuit apud C. coram (tali Judice) per W. probatorem (tali die & anno) pro diversis proditionibus per ipsum perpetratis, & ex illa causa fuit in C. & commissus prison. Dom. Regis de N. Attamen corpus, &c. ad diem & locum infracontent. parat. habeo, prout interius mihi præcipitur, &c.

Utlag'. A. filius A. de B. per nomen A. de B. ante adventum istius brevis utlagatus fuit de felon. coram P. S. R. T. & soc. suis Justic. Domini Regis ad pacem (in tali libertat.) vel in com. conservand. Et postea per præceptum dictorum Justic. mihi modo direct' idem A. capt' fuit apud D. & ea de causa commissus fuit prisonæ Domini Regis de C. attamen, &c.

Supplicavit. Virtute istius brevis vobis certifico, quod A. W. infrascript. capt. fuit virtute cujusdam alter. brevis Domini Regis vocat. supplicavit ad sectam D. P. diu ante adventum istius brevis, & commissus prisonæ Domini Regis de C. pro eo quod non potuit suffic. invenire securitatem de pace gerend. erga dict. D. & hac de causa & non alia, in dict. prisona detinetur attamen, &c.

Ante adventum istius brevis, virtute cujusdam alterius brevis voc' Cap. utlag. mihi directi, cujus transcript' vobis mitto præsentibus annex: Cepi C. D. infranom. ipsumq; prison. Dom. Regis de C. commisi, & adhuc in eadem denitetur prison. causa præmiss. attamen corpus, &c. Libr. Intr. fol. 457. d. *Cap. utlag.*

Ante adventum istius brevis, A H. & S. auditores Compotorum W. B. mihi per Indentur. deliber. Corpus R. S. infrascript. salvo & secure custodiend. quousq; satisfec. præfato W. B. de 200 l. arrerag. super fine Compoti. R S. per dictos Auditores invent. &c. Et hæc est causa captionis & detentionis ipsius R. S. Attamen corpus, &c. *Accompt.*

Other special Returns upon a Habeas Corpus.

EGo A. B. Armig' Vic' com. Cant. Domino Regi ad diem & locum in brevi huic scedul' annex' content' certifico, quod ante adventum ejusdem brevis A. O. in dict. brevi nominat' capt' fuit infra com. prædict. per W. V. Armig. nuper Vic. comit. prædict. & in prison. dicti Domini Regis Castri sui Cantabr. in comitat. præd. salvo custod. ejusdem nuper Vicecom. detent', virtute cujusdam brevis dicti Domini Regis de capiend. versus dict. A. teste apud Westmonasterium nono die Octob. anno Regni, &c. retorn. coram Justic. dicti Domini Regis apud Westmonasterium à die Sancti Martini in 15. dies tunc proxim. sequen. ad satisfaciend. T. D. gener', tam de quodam debit' de 40 l. quam de 30 s. pro dampnis, unde idem, A. coram præfat. Justic. apud Westm. convictus fuit; cujus quidem corpus, sic capt. & in prisona præd. sub custod. dicti nuper vicecom ea occasione existent. detent', ego præf. A. B. nunc vicecom. com. præd. recepi de præd. nuper Vic. in ejus exitu ab officio suo, & corpus ejus per me de præf. nuper vic. sic recept. in prisona præd. salvo custod. feci, quousq; postea, scilicet decimo die Decemb anno, &c. recepi quoddam breve dicti Domini Regis de Supersed. mihi directi, cujus quidem brevis' tenor sequitur in hæc verba *Jac. &c.* Virtute cujus quidem brevis de Supersed. pro eo quod non fuit aliqua alia causa detentionis præd. A. dict. A. ad largum ire permisi, dict. breve de capiend. ad satisfac. in aliquo non obstante, prout per dict. breve de Supersed. mihi inde præcipitur. Ideo corpus præd. A. coram præf. Domino Rege ad diem & locum in dicto brevi huic scedul' annex. content', parat. habere non possum, prout idem breve in se exigit & requirit. *Captus a satisfac.* *Superfed.*

A. B Ar' Vic.

Ego A. B. Armig. Vic. com. Cant. Dom. Regi certifico quod corpus infranom. R. T. jacet sub salva custod. mea in executione ad sectam T. B. pro 100 l. ret. coram Justic. Dom. Regis apud Westm. à die Sancti Mich. in unum mens. Ideo corpus ejus ad diem & locum infracontent. habere non possum, prout interius mihi præcipitur. *Captus in execution.*

A. B. Ar' Vic'.

And yet if a man be condemned in any Court, and his body taken in execution, and then he procures any Writ to the Sheriff to remove his body, &c. the Sheriff upon such Writ, ought not only to return the truth, or cause of the Condemnation, sc. that his prisoner is condemned by judgment, or in execution, that so at the last the prisoner may be remanded; for he shall not be let to Mainprise, but be sent back

to Prison, there to remain until he hath satisfied the Plaintiff. Fitz. 251. c. & (Stat. 2 H. 5. c. 2.) But also the Sheriff ought to bring in the body at the day, and according to the Writ.

Impris. per warr. del Just. de Peace. Ante adventum istius brevis mihi direct. infranominat. H.H. commissus fuit gaolæ Domini Regis Castri sui Cantabr. in comitat' infrascript. sub custod. mea virtute cujusdam Warr. F. C. & J. W. duorum Justic' dicti Domini Regis ad pacem in com. prædict. conservand. necnon ad divers. felon. transgr. & al. malefact. in eodem com. perpetrat. audiend. & terminand. assign. geren. dat. tertio die A. anno infrascript. pro quibusdam transgression. & contempt' contra formam Statuti pro punitione Vagabond. & pro pauper. & impotent' edit' & hæc est causa captionis & detent' ipsius H. Corpus tamen prædict. H. ad diem & locum infracont' parat' habeo, prout interius mihi præcipitur.

A. B. Ar' Vic'.

Captus per dat vic'. Ego A. B. Armig' Vic. com. C. Justic' infrascript. certifico, quod corpora R. T. & cæter. defend. infranominat. per me non capt' fuer. sed per W. V. Armig. nuper vicec' com. præd. prædecess. meum, & mihi per ipsum minime deliberat' in exit' ab officio suo. Ideo corpor. eorum coram Justic' infrascript' ad diem & locum infra content' habere non possum, prout interius mihi præcipitur.

A. B. Armig. Vic'.

Mandavi ballivo. Virtute istius brevis mihi directi mandavi ballivo libertatis T. Episcopi E. ad capiend. & arrestand. infranominat' J. S. in forma infrascript' qui plenum habet retorn. omnium brevium & præceptor. & executionem eorundem infra libertatem præd. Ac quod nulla execut' istius brevis per me fieri potest infra eandem libertatem; Qui quidem ballivus nullum mihi adhuc dedit responsum; vel sic, qui mihi respondit quod infranominat' J. S. non est invent' in balliva sua; vel sic, quod cepit corpus infranominat' J. S. cujus quidem corpus ad diem & locum infracontent. parat. habet ad fac' ea omnia quæ istud breve in se exigit & requirit.

Habeas corpor' Jurator. Habeas corpor' Jurator'. Vide hic Retorn. de Venire facias.

Retorne de Habere fac. Seisinam.

Habere fac. seisinam. Virtute istius brevis mihi directi, Justic' infrascript. certifico, quod tali die & anno infrascript. habere feci *A. G.* plenam seisinam de uno Messuag. cum pertin. in *S.* infraspec. in omnibus prout istud breve in se exigit & requirit.

Note that in an Habere fac. seisinam, the Garnishment must be upon the Land. 22 H. *6.* 38.

And the Sheriff in Cases where Land is recovered, is to put the party in possession and seisin by a twig, bough, clod, or the like. Br. Rediss. 5. & Perk. 42.

Or if the Recovery be of an house, then the Sheriff may put the party (who hath recovered the house) in Seisin or possession thereof, by delivering to him the Ring of the door of the house, &c.

Or otherwise the Sheriff may open to him the door of the house, and bid him to enter into the same house, and to take Seisin, or possession thereof by force of the Recovery, &c. Perk 43.

And if the Recovery be of a Rent, the Sheriff may put the party (who hath recovered the Rent) in seisin thereof, by the Corn or Grass growing upon the Land, out of which the Rent is issuing: Or by the twig or bough of a Tree growing upon the same Land; or by Distress of Cattel Levant, and Couchant upon the same Land; Or by a clod of the same Land. And this is a good seisin of the Rent, notwithstanding that the day of payment of the Rent be not then come.

Mes le party ne poet chaser tiels avers ove luy hors de mesme le lieu. Perk. 42.

Of a Rent recovered the Sheriff may deliver Seisin by Distress, &c. Fitz. Assise 444. or may deliver Seisin by parol, or by any parcel of the Land, out of which the Return is issuing (Fitz. 179. h. as by a twig, or clod. Br. Redis. 5. & Seisin 7. 14, 30.

Or by delivery of any thing upon the ground, Br. Seisin 14. Mez. ibid. is. contra.

Virtute, &c. tali die & anno infrascript. habere & assignare feci infranom' *A. G.* plenariam seisinam, de Manerio & tenementis infraspec. in loco convenienti, viz. de Manerio de F. 20 acr. terræ, 100 acr. prati, &c. cum pertinen. in *F. &c.* in com. infrascript. secundum formam & effectum, &c. *Aliter.*

Virtute istius brevis mihi directi *26.* die *O.* anno infrascript. habere feci infranom. *N. S.* plenar. seisinam de & in tenementis infraspec. cum pertinen. prout interius mihi præcipitur. *Aliter.*

A. B. Ar' Vic'.

Nota que le defendant apres Judgment poet enter ou distrein devant ascun seisin deliver a luy per le Vic. sans brief de Habere facias Seisinam, &c. lou ter. Rent ou auter chose in certein est demand. Co. L. 34. b.

The Sheriff returns, that he offered to the Demandant Seisin (by meets and bounds) &c. and that he refused it; this is a good Return, Dyer 278.

But if the Sheriff returns that he offered Seisin to the Demandant, who refused it, *Nul alius habere fac. Seisinam serra grant.* Dyer, ibid.

Upon an Habere fac. Seisinam, the Sheriff returned that none came to receive Seisin, &c. Fitz. Execut. 248.

The Sheriff returned, that the Sheriff himself was Tenant, and so he could not serve the Writ, &c. Br. Retorn. 46.

Br. Ret. 89. But in an Habere facias seisinam, it is no good return that there is no such land, &c.

Neither is it any good Return, that another is Tenant of the land by right: Or that he against whom the Recovery is had, hath nothing in the land, or is not Tenant thereof; and that therefore he could not enter to make execution of the Writ, Co. 6. 52. & Plo. Manxels Case, fol. 13. 14. & Fitz. Retor. 91.

Nota

Nota que sur habere fac. seisinam direct al Vic. il doit execute le brief coment que in fait estranger soit seisi del terr. & nul de les parties al brief fuit unques seisi de ceo : Et tiel estranger ne punier le Vic. pur fesance le Commandment le Roy done per son brief. Plo. Manxels Case, fol. 12. b. & Co. 6. 52.

If a man recover Lands in three Towns, and hath a Writ of Execution awarded to the Sheriff, the Sheriff may deliver him execution and possession of the Land in one Town, in the name of all the Land, and it is a good execution for all the Lands recovered in all the three several Towns, per Curiam in Communi Banco 31. Eliz.

Note that upon an Habere fac. Seisinam, as also upon an Habere fac. possessionem, if the Sheriff shall duly execute the Writ, and that the Plaintiff or Demandant have his demand there, though the Sheriff returns not the Writ, it is not material. Hic cap. 38.

The Sheriff returned that he could not deliver Seisin by reason of resistance, made by J. B. and other persons unknown, and was amerced for that he might have taken Posse Comitatus. Fitz. Execution 247. Vide 8 R. 2. Fitz. Suggestion 15. tiel retorn allow.

Upon the Habere fac. Seisinam, or possessionem, the Sheriff may break open the house, to deliver seisin or possession. Co. 5. 91.

Retorn' de habere fac. possession. cum Fieri fac'.

Habere fac. possess. VIrtute istius brevis mihi direct. vicesimo quarto die Maii, anno infrascript. habere feci infranominat. *H. H.* possessionem termini sui infrascript. de tenementis infrascript. cum pertinen' ; ac etiam fieri feci de terris & catallis infranominat. *W. W.* xx s. parcel. dampnorum infrascript. & denarios illos habeo coram Just. infrascript. ad diem & locum infracontent. ad reddend. præf. *H. H.* prout interius mihi præcipitur.

A. B. Ar. Vic.

Aliter. Virtute, &c. Justic. Infrascript. ad diem & locum infracontent. certifico, quod tali die & anno, habere feci infrascript. *J. F.* & *M.* uxori ejus, visum de Messuag. &c. infraspecificat. cum pertinen. Et dixi *A. B. C. D. E. F. G. H.* quatuor milit. de com. meo (or, ex illis) qui visui ill. interfuer. quod sint coram Justic. prædict. ad diem & locum infracontent. ad testificand. visum ill. prout interius mihi præcipitur. Libr. Intrac. 686.

Aliter. Virtute, &c. Domini Regis huic scedulæ annex. habere feci *J. G.* in eodem brevi nominat. visum de lx acr. pastur. cum pertinen. in G. quas *H. F.* in cur. Dom. Regis coram Justic. suis apud Westm. clam. ut jus & hæreditat. suam versus præd. *J. G.* per breve Dom. Regis in forma donationis in discend. Et dixi quatuor milit. qui visui ill. interfuer. quod sint coram Justic. dict. Dom. Regis apud Westm. ad diem in dicto brevi specificat. ad testificand. visum ill. prout in eodem brevi mihi præcipitur.

Habere fac. visum. Virtute, &c. Justic. infrascript. certifico, quod nullus ex parte *R. S.* venit ad ostendend. mihi visum de Messuag. & pratis cum pertinentiis, infrascript. Ideo ad execution. istius brevis per me nihil actum est ad præsens. Fitz. Retor. 103.

Nullus venit ad me ex parte infranominat. *R. F.* ad monstrand. mihi visum de pastur. infraspecificat'. ob quam causam visum de pastur. ill. infrascript. *R. F.* habere facere non potui.

Note

Note that in real actions, where the Tenant doth not well know the Land demanded, he may pray the view, &c. that he may be learned which is the land demanded.

Also the Sheriff is bound to know, or to seek the Land demanded, and therefore, except the Demandant sheweth it to him, he may make his Return accordingly.

And therefore these be good Returns.

Nullus venit ex parte petentis ad ostendend. mihi Tenementa petita, & Ideo dicto T.S. *(petenti) de Tenementis ipsis assec. habere visum ad præsens non potui,* or *non feci.*

En præcipe quod redd. brief issit de faire le tenant aver le view, le Vic. retorn' que il mand. al Bayliff le Seignior del Franchise que respond. que le demandant ne vient pas pur faire le view, Fitz. Proces 5.

Le Vic. Retor. que le tenant ne veigne pur aver le view. Fitz. View 120.

Vic. retorne que il est prest. a faire le view, & nul vient de part le tenant de aver le view. Fitz. View 156.

See plus hic postea tit. Br. de View.

Note that upon a Writ of View, it is a good Return, Quod nullus venit ex parte petentis ad demonstrandum, (or ostendendum) sibi terram; for the Sheriff is not bound to know, nor to seek the land, 14 H. 6. 20. & 32 H. 6. 27. Fitz. Retor. 103.

And if the Demandant shall shew to the Sheriff a Strangers Land, by force whereof the Sheriff enters, &c. yet is he no Trespassor. Keil. 119, 120.

Precipe de Rent, the Tenant demands the view, which was granted, and the Sheriff returned, feci habere visum in Decem solid. redditus, and this was challenged, for that the Return ought to have been, feci habere visum de terra unde Redditus, &c. 41 E. 3. Fitz. Retor. 70.

When the Sheriff maketh the View, he ought to warn the Tenants and Veyors, for otherwise the Tenants shall not know when the Sheriff maketh the View. Quære & vide. Fitz. View 150. And the Sheriff and Veyors must go to the Tenements demanded, &c. And the Sheriff must have with him six (at the least) of the Jury to take the View. Co. L. 158.

En brief de Droit le Vic. ne poet recorder le view sans les Veyors, &c. le 4. Chevaliers que le view tesmoigne. Fitz. View 164.

Nota ou terr. ove meason sont en demand. chescun parcel serra mise in view, autrement est de Mannor, car de Mannor rien serra mise in view, mes le Scite ove les appurt. & nemy per parcels &c. Fitz. view 115.

Le Vic. retorne que le defendant fist. le view de meason, & viender al lieu, &c. Et quant al 10 acres le defendant dit al tenant que ceux 10 acres de terr. fuer. in tal field per certain meste Est, West, North, & South. sans amesne le party al ascun parcel, &c. Et le view tenus bon. Fitz. View 154.

In an Assize of Land in two Towns, the view ought to be made in both Towns of Assize 122.

The view in an Assize, ought to be made where the Disseisin began, F. Ass. 28.

Where part of a Mannor, or the like, is in demand, yet the view shall be of the whole. 11 H. 4. Br. View 39.

So where a moiety, or third, fourth, or other part of house or land is only in demand, yet the whole shall be put in view. Br. View 46. 71.

If a Rent be granted, but out of no land, and yet certain land is charged to the distress if rent be behind, there in any assize this land so charged shall be put in view. Br. Ass. 150.

If a Rent be granted out of one land, and other land within the same County charged to the distress, here both these lands shall be put in view. Ibid.

Viewers, are those that are sent by the Court to take the view of any place in question, for the better decision of the right: Old Na. Br. 112. Bracton lib. 5. tract. 3. c. 8.

It signifieth also those that are sent to view such as essoine themselves de malo lecti, whither they counterfeit, or be in truth so sick as they cannot appear. Br. lib. 5.

It is used also for those that are sent or appointed to view an offence.

And *view*, signifieth the act of these viewers. Minsh.

Homine replegiand'.

Homine repleg. Virtute istius, &c. Domini Regis interius nominat. certifico quod nullum aliud breve, vel mandat' dict. Domini Regis de repleg. infrascript. J. C. quam W. S. infranomin. cepit & capt. tenet, prout interius specificat. quam istud breve de plur. repleg. præd. J. ad manus meas devenit, nec mihi liberat. fuit. Nihilomin. Justic. dicti Domini Regis ulterius certifico, quod statim post reception. ejusdem brevis accessi ad prædict. W. S. de repleg. faciend. prædict. J. quam præd. mihi ostendere noluit, sed præd. J. ante adventum istius brevis ad loca mihi incognita elongavit, & post receptionem ejusdem brevis, ipsa J. non est invent. in balliva mea, sic quod aliquam repleg. ipsius J. juxta mandat. hujus brevis ullo modo facere non potui, prout interius mihi præcipitur.

Aliter. Nullum aliud breve præter istud de replegiand. infranomin. D. G. ad manus meas hucusque devenit. Et ulterius Justic. infrascript. certifico quod prædict. D. elongatus est ad loca mihi ignota, per infranominat. J. T. J. B. & T. R. per quod prædict. D. repleg. non possum, prout interius mihi præcipitur.

In a Writ de Homine Replegiando, it is good return for the Sheriff to say, that the defendant claimeth the plaintiff to be his villain, per quod ipse ulterius facere inde non potest, &c. Fitz. Ret. 47. & 58. Sed vide 32 E. 3. Fitz. Ret. 87. contra, that such a return was disallowed, and a sicut alias was awarded. 8 H. fol. 2. Br. 104.

And yet vide Fitz. fol. 66. f. 68. b. that upon sureties found (in Court) by the plaintiff to yield his body, &c. he shall have a special Writ to the Sheriff to deliver the plaintiff, &c.

If the defendant claimeth the plaintiff to be his Ward, (in a Writ de Homine Repleg.) it seemeth to be a good Return for the Sheriff to say so; and the plaintiff may have a special Writ, &c. shewing that he holds the same land of the defendant in Socage, and not by Knights-Service, commanding the Sheriff to deliver the plaintiff, &c. and to take pledges of the defendant for his appearance, &c. and to answer the plaintiff, &c. Fitz. 67. a.

In a Writ de Homine Repleg. if the Sheriff return that the defendant hath esloined (or conveyed away) the body of the plaintiff, so as he cannot make deliverance, &c. Then the plaintiff shall have a Capias in Withernam to take the body of the def. and him to detain, &c. until, &c. (be he a Peer of the Realm, or other common person:) And if the Sheriff Fitz. 68. c. Ret. 51. *Cap. in Withernam.*

riff return Non est inventus upon this Capias in Withernam for the body, then the plaintiff shall have a Capias in Withernam of the goods of the Defendants. 11 H. 4. fol. 15.

In a Homine Repleg. the Sheriff returned that he could not have the view, &c. Et Ideo, &c. Fitz. Mainprise 23. Intr. 402.

CAP. 64.

Retorn. brevis ad Inquirend. de Dampnis in breve de Dote, ubi tenens obiit seisitus: See hic antea Retorn. de Dote.

Retorn. brevis ad Inquirendum de Dampnis, in breve Transgress.

EXecutio istius brevis patet in quadam Inquisitione, &c.

Inquisitio indentat. capta apud W. in com. C. (tali die & ann.) coram R. W. Armig' Vic' ejusdem com. virtute cujusdam brevis Domini Regis eidem Vic. direct';& huic Inquisitioni consut', per Sacrament' R.S. &c. (ad numerum 12 Jurator.) Qui dicunt super Sacrament' suum, quod A. P. in brevi huic Inquisition. consut' nominat', sustinuit dampna occasione transgressionis pro J. H. in prædict. brevi nominat', prout in eodem brevi fit mentio, ad xl s. Et pro misis & custagiis ipsius A. P. per ipsum circa sectam suam in hac parte appositis ad xl s. In cujus rei, &c.

Executio istius brevis patet, &c. (ut supra.)

Aliter Inquisitio, &c. Qui dicunt super Sacramentum suum, quod W. B. in dicto brevi nominat', sustinuit dampna occasione transgress. in eodem brevi spec. ad viginti solidos, & pro misis & custagiis suis per ipsum circa sectam suam in illa parte apposit ad viginti solid. In cujus rei testim. &c.

Inquisition, in what cases.
- Upon an ad quod Dampnum. Libr. Intr. fol. 25.
- Upon a Writ of Admeasurement, &c. hic c. 49.
- Upon a Capias utlagatum, hic c. 54.
- Upon an Ætate probanda, hic c. 57.
- Upon an Elegit, hic c. 58.
- Upon a Writ to enquire of damages, c. 56. & 77.
- Upon an Extent of a Statute, or Recog. c. 58.
- Upon a Partition, hic c. 68.
- Upon a Proprietate probanda, hic c. 73.
- Upon a Redisseisin.
- Upon a Secunda Superoneratione, c. 76.
- Upon a Writ to enquire of waste, c. 79.

The Sheriffs are first to swear the Jury, and to give them their Charge.

Inquisition prise (& Retorne) sil ne monstre le certeinty del Ann, jour, & lieu, del Inquisition prise, semble nest bon.

Et si le brief voile que le Enquest doit estre prise al un certein jour, le Vic. doit Retorne que il fuit prise a mesme le jour. per Belk, 40 E. 3. Fitz. Ret. 64.

Ou le Vic. est de faire inquisition (per 12 homes, &c.) Et le Jury appear, & ont lour charge, &c. Et per reason d'ascun difficulty, le Vic. done al Jurors un respite per certein jours, & al jour issint appoint al Jury de doner lour verdit, lun del Jury fait default, Et le Vic. assess fine de 40 s. sur luy, & retorne ceo, &c. tiel doner de respite al Jurors semble bon: Mes quære de tiel assessment de fine per le Vic. sur Juror de Enquest de office, per fesant default al jour, &c. Dyer 266. See hic c. 79. that the Sheriff may return such their departure and contempt.

Uncore si un del Jury en un Leet devant que il ad done son verdict, il serra fine per le Seneschall. Sed nota que Leet est Court de Record, & le Seneschall est Judge la, & nul forsque Judge de Record poiet imposer fine (vide pur ceo. Co. 8. 38, 41, & 60)

Et issint semble ou le Vic. est fait Judge del cause, come sur enquiry de wast.

Lou le Vic. est de faire Inquisition, semble que nul des dits Inquirors poiet estre Challenge, pur ceo que ils ne sont forsque Enquest de office. Vide Kiel 125. & hic c. 79. & quære, & Stamf. 131. a.

Si Vic. fait faux Retorne, Action sur le case gist vers luy; Mes ou le Vic. prist enquiry per enquest, & retorne ceo, coment que ceo soit faux, uncore le party n'ad remedy vers le Vic. ne vers ascun auter. Co. 5. 32. *quod Nota, & soit bien observe per touts Vic'.*

Uncore in breif de enquire de wast, challenge poiet estre prise, & sil soit deny per le Vic. cest est error. Eadem lex in Redisseisin. Br. Office 4.

Et issint le Vic. fera le Pannel, & uncore judgera ceo d'estre quash, si cause soit. Ibid.

Auxi in Proprietat. probanda les parties poient aver lour challenges. Co. L. 158. b.

In every case the Sheriff must make his enquiry by 12 men, and must return their Inquisition under his and every of their Seals by judgment.

And he must charge the Jury to make enquiry according to the Writ.

Upon an Inquisition taken by the Sheriff, if any doubt shall arise, &c. the Sheriff may return that he and the Jury were in doubt, shewing wherein, and so pray the advice of the Court therein. Hic c. 58.

CAP. 65.

Retorne de Levari facias.

Levari fac. T. F. infrascriptus nulla habet bona sive catalla in balliva mea, de quibus denarios infrascriptos, aut aliquam parcellam inde levare possum, prout interius mihi præcipitur, &c.

Aliter. Virtute, &c. cepi in manus Domini Regis quoddam hospitium cum tribus shopis (in tali loco) ipsius J. T. infrascript', quæ valent per annum ultra repris. 10 l. Et quod prædict. hospitium cum shopis prædict. salvo custod' donec aliud a vobis inde habeo in mandatum. Regist. 300. tit. 28. Fit. 26

Upon a Levari fac. if the Sheriff returneth that he hath levied 10 l. of the sum, &c. the which he hath delivered to the party, &c. this

seemeth

seemeth to be a good Return: and upon this return the party may sue a Sicut Alias levari fac. directed to the Sheriff to levy the residue. Fitz. 245. h.

Vide four sorts of Writs de Levari facias. Minsh. verbo Levari fa.

Latitat.

Non est inventus retorn sur Latitat. Libr. Intr. fol. 109. c. 165. d.

Also Cepi Corpus, and other returns may be made upon a Latitat, as upon a Capias ad respond.

Retorne de Liberate. *Liberate.*

Upon a Liberate, if the Sheriff hath duly executed the Writ, and paid the money to the Plaintiff, he needs not return the Writ, hic cap. 38.

Virtute istius brevis (tali die & anno) liberavi L. S. infranom. manerium infraspec. cum pertin. tenend. sibi & assig. suis ut liberum tenementum suum, quousq; sibi de debito infrascript. una cum dampnis, misis & expensis, quæ in hac parte rationabiliter sustinuit plenar. satisfac. fuerit, prout istud breve exigit & requirit, J. S. infranominat. non est inventus in balliva mea. Libr. Intr. 598.

Nota que Liberate, est prise in divers manners.

1. *Est bref al Vic. pur deliver ters ou biens prise sur forfeiture d'un, &c.*

2. *Est warrant grant al Treasurer & auters del Eschequer, pur le payment ascun annual pension grant south le grand seal.*

3. *Est warrant al Gaoler pur deliver prisoner, &c. Termes del Ley.*

CAP. 66.

Retorne de Mandavi Ballivo Libertatis.

Virtute istius brevis mihi direct. Mandavi J. D. ballivo Libertatis T. Episcopi E. ad capiend. & arrestand' infranominat. J. S. in forma infrascript. qui plenum habet retorn' omnium brevium & præceptor', & execution. eorundem infra libertatem præd. Ac quod nulla execut' istius brevis per me fieri potest infra eandem libertat': qui quidem ballivus nullum mihi adhuc dedit responsum; vel sic: qui mihi respond. quod infranominat' J. S. non est inventus in balliva sua; vel sic, quod cepit corpus infranom. J. S. cujus quidem corpus ad diem & locum infracontent' parat' habet ad fac' ea omnia quæ istud breve in se exigit & requirit. *Mandavi ballivo.*

A. B. Ar. Vic.

Fitz. 137. b. Vide Co. L. 100. 2. b. 13 E. 1. c. 9.

In a Writ of Mesne the Proces at the Common Law was only a Distr. infinite, in the same County where the land lieth; but at this day (vide Co. L. 100. b.) the Plaintiff may chuse whether he will sue by Proces at the Common Law, s. Distr. infinite, or by Proces which is given by the Statute of 13 E. 1. sc. summons, attachment, and the great *Mesne.*

great distress, which shall have day of return by such time, that two Counties may be holden, in which two Counties the Sheriff shall cause to be proclaimed solemnly that the Mesne do come at the day contained in the Writ, to acquit the Tenant or Plaintiff, &c. and if he come not, and the Sheriff returneth the Writ accordingly, then the Mesne shall lose the service of the Plaintiff, &c. See hic c. 102. & Co. L. 100.

Retorne de Brief de Medio.

Summonit. Manucaptor. prout in alio breve.

Et ulterius vobis Justic. respondeo, quod in pleno Comitatu meo tent. apud C. &c. die, &c. publice proclam' feci, quod prædictus H. veniret coram Justic. infrascript. &c. si voluerit, prout per istud breve mihi præcipitur; &c.

Si in ceo brief de mesne le Vic' retorne Nihil habet, &c. uncore issuera un attachment, & si le vic. retorn Nihil auxi a cel brief uncore issuera un grand distress ove le proclam. ut super.

Nihil. Nihil habet Medius unde potest summoniri: which being returned upon that attachment Nihil habet per quod potest attachiari. After upon the grand distress Nihil habet per quod potest distringi. } Vide Stat. West. 2. c. 9.

Retorn. super breve de Ordine Militari recipiend.

De ordine milit' recipiend. Virtute istius brevis tam infra libertates quam extra, per totam bali. meam, publice proclam. feci, quod omnes & singuli person. terr. tent' & redd. ut infrascript' est habentes, (quorum nomina in quad. scedula huic brevi annex. sunt script') ad præsentiam Domini Regis circa festum infraspec. personaliter compareant, & accedant ad præfat. ordinem recipiend. prout interius mihi præcipitur.

Milit. Parliament. Eligend. Milit. Parliamenti. See ante & hic postea.

CAP. 67.

Retorne de brief de Nativo habendo.

Nativo habendo This Writ may go out to the Sheriff to hold plea of the matter in his County, or it may be returnable in Banco. Fitz. 78. a.

Upon this Writ sued out by the Lord, and directed to the Sheriff, the Sheriff may seize the Villein (if he can) and may deliver him to the Lord, if the Villein shall confess to the Sheriff that he is a Villein; but if the Villein shall alledge to the Sheriff that he is a Free-man, then the Sheriff may not seize him, but then the Lord must sue out a Writ called a Pone, to remove the Plea before the Justices of the Common Bench. Fitz. 77. a. c.

Also where the Villein shall purchase a Writ de Libertate probanda, the Sheriff is to proceed no further in the Writ de Nativo habendo; for the Fitz. 77. d.

the Writ de Libertate probanda, is as a Supersedeas, and thereupon the Sheriff is to adjourn the Record or Plea before the Justices, &c. Br. Villen 45.

Upon the Libertate probanda the Sheriff returned, that no such Writ de Nativo habendo was delivered to him, nor that he had no such Plea depending before him in the County. Br. Villen 45.

Upon a Nativo habendo the Sheriff returned Mandavi ballivo Libertatis, &c. Qui nihil dicit *(ou fecit)* &c. Fitz. Ret. 52. Br. Villen 16.

The Sheriff of London in a Nativo habendo returned that (by their custom) if a Villen were abiding in London by a year and a day that he was not to be taken out, and it was holden a good return. Br. Custom 22. & Ret. 46.

In a Nativo habendo the Sheriff may not return that the defendant is a Free-man, &c. for that must come from the party himself. Br. Ret. 46.

Vide le Retorne de Pone de Remover le plea in Nativo habendo. Liber. Intr. fol. 436. b. c.

Sur Nihil Retorne in

- Admeasurement de Dower or Pasture: The plaintiff shall have the like Judgment, as if the writ had been returned served. Br. Adm. 7.
- Assize, the Assize shall be taken.
- Brief de Gard, the plaintiff shall have Judgment as if the Writ were served. Br. Ret. 101.
- Brief de Mesne, Proces shall go out to fore-judge the Mesne. Vide Co. L. 100. a. b. who shall be bound by fore-judger, and who not.
- Quare Impedit, Vide hic, Return of a Quare Impedit.
- Scire facias, Two Nihils returned do countervaile Scire feci.
  - Upon a Scire facias to execute a Judgment in Debt, Trespass, or Annuity, if at the first day the Sheriff shall return Nihil, the plaintiff shall have execution.
  - 2 H. 7. 3. a. In an Accompt, the defendant was outlawed, and obtained his pardon, and had a Scire facias against the plaintiff, who was returned Nihil, and the pardon was allowed upon one Nihil returned, &c. 21 E. 3. Br. Retor. 109.
- Scire facias vers Executors, sur deux Nihils retorne, ils serra condemn, & charge de lour proper biens. Co. 5. 32.
- Brief de Waste, The plaintiff shall have Judgment, as if the Writ were served. Br. Ret. 101.

Retorn. brevis si defend. sit insuffic', &c.

Pleg. de prosequend. { *J. D.* / *K. K.* }

Infranominati A. B. & C. D. nihil habent in balliva mea per quod sum' possunt, (if it be in debt, or other Writ where summons lieth.) *In Deb.*

Infra-

In trespass. Infranominati H. B. & C. D. nihil habent in balliva mea per quod attachiari possint (or potest, if but one Defendant.)

Note if there be more Defendants then two, then you must name but one, & cæteri defend' infranominati, nihil habent, &c.

Sur Distr'. Infranominatus A. B. nihil habet in terris, tenementis,& hereditamentis infrascript', per quod ipsum distringere possum.

Or thus: Nullum tale Manerium,neq; ulla terr. sive tenta. cognita per nomen de E. jac' in com. Cantabr. unde tenentes inde distringere possum, prout interius mihi præcipitur.

Sur Fieri fac'. Infranominatus R. B. miles nulla habet bona seu catalla, ter. aut tenta. in balliva mea,unde denar' infraspec' fieri fac' possum, prout interius mihi præcipitur.

Sur Scire fac'. Infranominatus A. B. nihil habet in balliva mea per quod ei Scire facere possum, neque est inventus in eadem.

A. B. Ar' Vic.

Plus hic fol.

CAP. 68.

Partitione.

Retorna brevis Originalis in partitione.

PLeg' de prosеq. { *J. D.* / *R. F.* }

Summ' infranominat' B. R. & E. uxoris ejus. { *W. H.* / *H. S.* }

A. B. Ar' Vic.

Note that such a Return may be made in all other actions real,if the Defendant be sufficient.

Nota quant jugment serra done sur brief de Partition, le judgment serra tiel, sc. *que partition serra fait inter les parties, Et que le Vic. en son person alera a les terrs & tenements,&c. Et que il per le Serement de* 12. *loyal homes (de son Bailiwick, ou County) fera Partition enter les parties; Et que lun part de mesme les terrs & tents. soient assignes al Plt. ou al un des Plts.& un auter part al un auter,&c. Et de le partition que le Vic. issint fera, il doit done Notice al Justices (per son Retorne) south son Seal, & les Seals de chescun de les* 12. *Jurors,&c. Et le Vic. ne poiet retorne quel partition il voil.* Littl.248,249. Co. L. 169.

Et in tiel case, le eigne soer n'avera mie le primer Election, mes est al election del Vic. de assign. le eigne sa part, & l'auters lour parts: Et il poiet assign. primerment un part al puisne, & dareignment al eigne, &c. Ibid.

Et sic nota que le Partition serra fait per le Jury, que doient faire ceo egalment; & donque le vic. poiet assigner lun part al un, & l'auter part al auter, a son election.

Mes le vic. doit Summon les parties d'estre devant luy quant il fait le Partition.

Sur-

Sur breif de Partitione *faciend' inter 2 Parceners, de 2. Mannors, le Vic. poet assigne lun Mannor a lun, & l'aut' Mannor al auter per* Littl. 12 E. 4. fol. 2. *Tamen per Broke,* hoc videtur intelligi, *ou les Mannors sont de equal values.* Et eadem lex *de 2. Acres.* Br. partit. 29.

Sur breif de partitione *fac. (sur le* Stat. 32 H 8.) *le Vic. retorn' le partition fait per xij loyals homes, & apres un des parties surmise inequality, & preia un novel breif; quære sil avera.* Dyer 73.

A. *&* B. *tenants in Common d'un Mannor.* A. *purchase franktenement issint mixt ove les demesne terr. que fuit Disconus :* B. *petit breif de partition des Mannors tantum, & Judgment fuit done quod partitio fieret : Et breif fuit direct' al Vic' de faire partition accordant. Et fuit tenus per les Justic', que* A. *doit monstre les bounds de son franktenement ou la certenty, ou number des Acres del ters per luy issint purchase, &c. Et que* B. *ne besoigne de monstre les bounds del Mannor al Jury. Mes si Evidence soit done de nul part. & le Jury fait partion de tanto quantum presumitur & dignoscitur per presumptiones, &c. sufficit : car ils sont compellable de server le Ley, & le Court, Et coment que nul des parties ust done evidence, uncore le Vicount, & le Jury sont de fair partition a lour perils.* Dyer 265, *266.*

Si villen discend. al 2. Parceners, Coment le person ne poit estre divide, uncore le profit de luy poet estre divide; come un Parcener poet aver Son Service un jour, ou un semaigne, &c. & l'auter Parcener, auter jour, ou auter Semaigne, &c. Co. L. 32. & *164.*

So an Advowson may be divided between Parceners, sc. **the one to present one turn, and the other another turn, &c.** Co. ibid.

So a Rent-charge may be divided, &c. Ibid.

Mes Estovers, come Housboote, Heyboote, &c. Pischary incerteın; Common sans number, &c. ne poet estre divide. Ibid. vide.

The profits of a Mill, of a Dovehouse, of Courts, of Tythes, and of stallage of a fair, may be parted. See Co. L. 32.

The Return of a Writ of Partition.

Executio istius brevis patet in quadam inquisitione huic brevi annex'.

Virtute brevis Dom. Regis mihi direct' & huic partition' Indentat' annex' Ego, *I. D.* miles Vic' com' prædict. xx die A. an. &c. xx assumpto mecum *I. S.* &c. xij liberis & legalibus hominibus de com. meo, ac de visnet' infrascript' in præsentia *H. F.* in brevi prædict' nominat', in propria persona mea accessi ad tenementa in dicto brevi nominat' & ibid. per eorum Sacrament' (habito respectu ad verum valorem eorundem tenementorum cum pertin.) eadem tenement' in partitionem in tres partes equales partiri feci, & unam partem eorundem trium partium, viz. xij pedes in longitud. & xviij pedes in latitud. messuagii in prædict' brevi specificat' extend. ad terr. *F. G.* vocat' B. versus occidentem & xxxiv pedes in latitud', & xij virgat. in longitud', & unius Gardini in breve præd specificat' eidem messuagio ad jacen. abbutand' versus occidentem ad terr. præd. *F. G.* vocat *B.* & terr' gleb. rector de *S.* Nec non, &c. Et ego prætat. Vic. præd. xx die *A.* anno, &c. ea deliberari & assignari feci *H. F.* in dicto brevi nominat', tenend' ei in separalitate, secundum formam & effectum brevis præd. Ac prout idem breve in se exigit & requirit. *Partitione.*

Quæ quidem integra tertia pars præd. tenementorum in præd. brevi specificat' præf. *H.* in forma præd. deliberat' & assignat' est, & quoad duas partes resid. præd. tenementorum in brevi præd. specificat' *I. F.* in

eodem brevi similit' nominat, ad partitionem præd. deliberand. & assignand'. Justic' Dom. Regis in brevi præd. specificat' certifico, quod nullus ex parte ipsius *I.* venit ad recipiend' de me præfat' Vic. easdem duas partes. Ita quod duas partes illas præfat' *I.* liberare & assignare non potui, prout breve prædict' in se exigit & requirit. In cujus rei testimonium tam sigillum mei præfati Vic. quam sigilla prædict. xij Jurator', huic partitioni Indentat. sunt appens. dat die & anno supradicto.

Aliter. Ego *A.B.* armiger Vic.Com.præd' Justic' in brevi huic schedulæ annex' specificat' Certifico, Quod virtute brevis illius in propria persona mea 10. die Aug. Anno, &c. accessi ad messuagium in brevi præd. specificat' & per Sacramentum *I. S. R. B. &c.* (ad numerum 12) probor. & legalium hominum de Com. præd.ac visnet' in eodem breve specificat. (habito respectu ad verum valorem ejusdem messuagii,) eundem messuagium cum pertin. in quatuor equales partes partiri feci, unam partem partium illarum, viz. &c. Tenend' *H. S.* & *F.* uxori ejus (in brevi præd. nominat.) in separalitate, per metas & boundas in jure ejusdem *F.* Aliam partem inde; viz. &c. tenendum *I C.* & *M.* uxori ejus (in brevi præd. nominat') in separalitate, in jure ejusdem *M.* Et duas alias partes inde, *viz.* &c. tenendum præfato *I. S.* in separalitate, in jure suo proprio. Et ego præfatus Vic. die & Anno supradict' eas deliberari & assign' feci prout idem breve in se exigit & requirit. In cujus rei testimonium, &c.

Vide libro Intrac. fol. 453. c. d. **The like return of a partition of certain Mannors, with the appurtenances, into two parts.**

Per quæ servitia.

In a *per quæ servitia,* **against the Heir of the Tenant, &c. the Sheriff returned, that the Tenant in his life time sold the Land in Fee, &c. So that the Heir had never any thing therein, &c.** Fitz. per queux servic' 13. 24.

CAP. 69.

Retorn. de Summon. Parliamenti.

Parliam'. Executio istius brevis patet in quibusdam Indenturis huic brevi annex'.

Retorn. de Summon' Milit' Parliamenti.

Virtute, &c. sum' feci *A. B.* Militem, unum Milit' de com. meo gladio cinctum per *B.T.* & *C. B.* quod sit coram Justic. infrascrip' ad diem & locum infranominat', prout istud breve in se exigit & requirit.

Manucapt' infranominat' *A. B. B. T.* & *C. B. I. D. R. R.*

Exitus cujuslibet eorum, xx s.

Retorna Eligend' Milit' Parliamenti & Burgess. **See** hic antea.

Retorn. brevis de Proclam. de Adjournamento Parliamenti.

Executio istius brevis patet in quadam Schedula huic brevi annex.

Virtute brevis Dom. Regis mihi directi, & huic schedulæ annex. Eidem Dom. Regi certifico, quod 16 die I. Anno Regni dicti Dom. Regis, &c. apud Cantabr. in Com. præd. & 20 die ejusdem mensis *I.* Anno supradicto, apud Linton in eodem Comitat. ac. 27 die I. Anno supradicto apud Newmarket in eodem Com. Nec non 9 die *F.* Anno supradicto apud E. in eodem Com. Proclamari feci omnia & singula in eodem breve content. secundum formam & effectum ejusdem brevis, Et prout per breve illud mihi præceptum fuit; In cujus rei testim. ego *A. B.* ar. Vic. Com. præd. huic. Schedulæ, sigillum meum apposui. *Cantabr.*

Præmunire.

Upon this Writ the Sheriff may Return, Quod Præmunire fecit, &c. quod esset, &c. coram, &c. ad faciend' quod istud br. exigit, &c. Fitz. Retorn. 61.

And such garnishment ought to be two months before the Return. Ibidem.

The Sheriff returned that the Defendant was garnished generally, but shewed not upon what day, &c. This was holden void. Fitz. Ret. 65. Br. Retorn. 56. 103.

VIrtute istius brevis tali die & anno per, *I. S. T. W. R. T.* & *F. F.* probos & legales homines de balliva mea, præmunire feci *W. R.* clerico intranominat', quod sit coram Dom. Rege ad diem intracontent' ubicunque, &c. ad faciend. & recipiend. prout istud breve in se exigit & requirit, Et *I. B.* & cæteri defend' intranominat' nihil habent in balliva mea per quod eis Præmunire facere possum ad præsens, nec sunt invent' in eadem. Fitz. Retor. 61. & 65. *Præmunire.*

CAP. 70.

Br. 125. IN a Præcipe quod reddat of Land, it is a good return for the Sheriff to say that the Tenant is dead: 32 H. 6. 27. *Præcipe quod reddat.*

Præcipe quod reddat, is a Writ of great diversity, touching both the form and use, and extendeth as well to a Writ of Right, as to other Writs of Entry or possession.

De queux choses briefs de Entry *gist, & de queux nemi.* Vide West. de Recoveries, Sect. 2. 3. 6. & 7.

If the Sheriff shall return that the Tenant, who is an Abbot, &c. is deposed, this is a good return, for that is as much as if he had returned him dead.

But if the Sheriff shall return that the Tenant is an Infant, or a Feme Covert, these Returns are not good. Dyer 104.

In a Præcipe quod reddat, the Sheriff returned, Quod defendens non est

est tenens, & quod Nihil habet unde cum Summon. potuit, *Quære si bon, eo quod petens testatur quod tenens est, & pur ceo le Vic pont aver. luy Summon in terra petita.* Vide Br. Summons, 23. & Fitz. Retor. 97. & hic cap. 36.

In a Præcipe quod reddat, the Tenant voucheth, and the Sheriff returneth (upon the Summons ad warrantizandum) that the vouchee, nihil habet, nec est inventus, &c. this is a good return; but otherwise it is in a Formedon; for that in a Formedon the Sheriff may summon him in the land demanded, whether he be Tenant thereof or no. Vide Fitz. Retor. 97. 14 H. 6. 20. Br. 62.

In a Præcipe quod reddat, it is no return to say, that the Tenant hath yielded the Land to the Demandant. 2 H. 7. Br. Retorn. 84. Fitz. Retor. 34. Br. 84.

And yet the Sheriff is by this Writ authorized to Command the Tenant to yield the Land to the Demandant. Co. L. 101.

But if (upon command of the Sheriff) the Tenant shall yield the Land, yet it seemeth that the Sheriff must Summon the Tenant (and must return the same) for that the yielding of the Land must be in the Court, when the party cometh in. Kiel 116.

In a Præcipe against two if the Sheriff returneth one of them Summoned, and the other not, this is no good return, but he must Summon them both, and so make his Retor. Br. 89.

In a Præcipe quod reddat, if the Sheriff shall return the Tenant summoned, where indeed he was not summoned, whereby the Tenant loseth his Lands by default, upon the Grand Cape returned, the Tenant shall have his action against the Sheriff for such false return. N. Br. 51. Fitz. 97. c.

Note that in a Præcipe quod reddat of Land, there ought to be two Summoners, Plo. 393. a.

Car si n'ad forsque un, & le tenant fait default, & perde per default, il avera breif de Disceit Ibid. & Fitz. 97. c.

And the Sheriff or his Officer, in the presence of those Summoners ought to Summon the Tenant, first to keep his day of the Return (naming that in certain) again he ought to name the Demandant, and also to name the Land in demand. Hic. cap. 31.

In a Præcipe quod reddat, upon the Summons if the Sheriff by information of the Demandant Summoneth the Tenant in another mans Lands, thinking it to be the Tenants Lands, the Sheriff shall be excused here for this his Entry into another mans Land. Doctor & Stud. 150.

Procès. Return de Proces Original: sc. Capias, Alias, & Pluries; See hic antea Retorn' de Capias.

Retorn' de Venire facias: See hic postea.

Vide Retorn' de Proclam' { *De Adjournment Parliamenti*, cap. 69. / *Sur utlary*. Hic cap. 59. / *Extra Cancellariam*, cap. 81. }

Vide Retorne de Proclam. de Summons in { *Br. de Admeasurement*, cap. 49. / *Br. de Communi Custodia*. Ibid. / *Br. de Dower*, cap. 56. / *Sur exigent*, cap. 59. / *Br. de Wast*, cap. 79. }

Retorne de Pone, sc. de remover Plee, &c. *Pone.*

Pleg. de prosequend' *I. D. R. F.*

Infranominat. *H. E.* attach. est per pleg. *N. F. R. D.*

R. M. Mil' Vic.

Or that party may be attached by his goods, and then the Sheriff may return it thus: Infranom. H. E. attachiatus est per unum equum precii xx s.

Infranom' *I. H.* nihil habet in balliva mea per quod attachiari potest.

Nota que chescun Pone est forsque summons: sc. *Command al Vic. de Summon, ou prefix. jour al parties, Plaintiff, & Defendant que ils sont in Bank, &c.*

If it be in a Writ of Right, See what the Sheriff must Return, Hic. cap. 56.

And if it be in a Replevin, the Sheriff must return the Plaint out of the County Court in Banco, and return the same under the Seals of four Suitors of the same Court, as followeth.

Virtute istius brevis mihi direct' posui coram Justic' Dom. Regis de Banco apud Westm. loquelam quæ est in com. meo. Per breve dicti Dom. Regis, inter T. W. & H. B. de averiis ipsius T. W. capt. & injuste detent. ut dic' prout pater in quadam scedula huic brevi annex. &c. *Pone sur repleg'.*

Or thus, Virtute istius brevis in forma infraspec posui loquelam infrascript. ad diem & locum infracontent. prout interius mihi præcipitur, cujus quidem loquelæ Recordum patet in Scedula huic brevi consut. simul cum alio breve unde infra fit mentio. Libr. Intrac. fol. 570. d.

Summon' *T. P.* I. D.

Ad com. meum tent. apud C. 12. die A. anno Regni Dom Regis nunc, &c. 20. T. W. queritur versus H. E. de placito captionis & injustæ detention. averior; Et sunt pleg. de prosequend' & retorna habend. si. ret. inde adjudicet. viz. I. M. W. F. In cujus rei testimonium I. K. B. C. D. G. & R S. quatuor legales homines ex illis qui recordo illo interfuer' in plena cuna illa eidem record' sigilla sua alternatim apposuerunt, die & ann. supradictis. *Scedulo.*

12 E. II. Br. 103. In a Replevin a Pone went out, and at the next Court the Plaintiff was nonsuit in the County; yet by Catesby, the Sheriff may serve the Pone, and execute the same (sc. to require the view of the Plea and to Record and return the same) but Mr. Brook maketh a Quære thereof, for that by the nonsuit, it seemeth there resteth nothing to be removed: But the Sheriff may return, Quod ad proxim. comitatum, &c. *le Plaintiff fuit nonsue, & sic nul parol la.*

But notwithstanding that the Plea be discontinued in the County, yet it may be removed by a Recordari. Vide Fitz. 71. a. & Br. Retor. 113.

And note that the Pone, and the Recordare, be only to remove the Suit into the Kings Court: And the Plaint only shall be removed.

Retorn sur breif de Proprietate probanda. See hic cap. 73.

CAP. 71.

Quare Impedit.

Quare impedit. IN a Quare Impedit, the Defendant must be Summoned by the Sheriff. Fitz. br. al. Evesque 4. 11 H. 6. 2. Br. 101.

And this Summons may be made in the Church, or to the person.

In a Quare Impedit, the Sheriff returned Nihil, upon the Summons, and upon the Attachment, and upon the Distress, and it was holden that the Plaintiff should recover, by the intendment of the Statute made Anno Tamen Martin contra, and that the Sheriff might have summoned the Defendant in the Church. Vide hic c. 31.

If the Sheriff return upon a Quare Impedit, Quod querens non invenit plegios, then the Plaintiff may find pledges in the Common Place, and shall have a new Writ of Quare impedit, and if the Sheriff return thereupon, Tarde, and the Defendant appear, and the Plaintiff be demanded and comes not, the Defendant shall not have a Writ to the Bishop, for that no Writ was served upon the Defendant. Fitz. 38. c.

If the Defendant comes not at the Distress returned against him, the Plaintiff shall have a Writ to the Bishop, without making any Title. Vide Dyer 241.

Quid Juris Clamat.

Upon the Writ of Summons in a Quid Juris Clamat, the Sheriff is to return the party Summoned in this or the like manner.

Plegii infranom' { *E. F.* / *I. S.* / *I. D.* }

A. B. Arm' Vic'.

In quid Juris Clamat le vic. Retorne quod Clericus est non habens laicum feodum, &c. Et fuit adjudge nul Retorne, car doit Distr. luy en le terr. en demand. Fitz. Retor. 59. Fitz. 38. n.

Quo Jure. Virtute, &c. tali die & anno, &c. Cepi in manus Dom. Regis tenementa infrascript' cum pertinent. Et alterius eisdem die & anno scire feci, tam *A. B.* capitali Dom. immediat' feod. tent' infrascript' cum pertinen'; quam infrascript' H. D. per probos & legales homines de balliva mea, quod sint coram Justic' infrascript' ad diem & locum infracontent'; auditur' recogn' infras. prout interius mihi præcipitur. Et ulterius eisdem Justic' certifico, quod non est alius capitalis Dominus feod. prædict' mediat', neque immediat', inter Dominum Regem, & infrascript' *A. B.* cui scire facere potui.

CAP. 72.

Retorn' de Recordare facias Loquel. in Comit.

Recordare est de remover Plaints in County Courts. Fitz. 70. b. *Chescun breif de faux Judgment, sur Judgment done in le County Court, est un Recordare & est directi' al Vic.* Fitz. 18. ab.

Virtute istius brevis mihi directi in pleno com. meo tent. apud. C. in com' C. infrascript' tali die & anno, recordari feci loquelam quæ est in eodem com' inter partes infrascript' unde interius fit mentio, quæ quidem loquela patet in quadam schedula huic brevi annex'. Et record' illud habeo coram Justic' infrascript' ad diem & locum infracontent' sub sigillo meo, & sigill', W. H. T. R. &c. quatuor proborum & legalium hominum ou milit' ejusdem com' ex illis qui record' ill' interfuerunt. Et partibus infrascript' diem illum præfixi, quod tunc sint in loquela illa, prout justum fuerit prosecutur', prout interius mihi præcipitur. *Recordare.*

Ad com. meum tent. apud C. in com. præd. tali die & anno, coram H.W. S.S. T.V. & A.B. quatuor sectator. curiæ præd. inter alia sic continetur. *Schedula.*

R. S. queritur versus I. T. de placito captionis & injustæ detentionis averiorum suorum (contra vad' & pleg' &c.) Et sunt pleg' de prof. Necnon de retorn' habend' si retorn' adjudicetur. *Loquela.*

Pleg' de prof. I. D. R. F. In cujus rei, &c. Ut antea in Retorne de Pone.

Virtute istius brevis mihi directi recordari feci loquelam quæ fuit in com' meo inter partes infrascript', & eisdem partibus diem præfixi, essendi coram Justic' infrascript' ad diem & locum infracontent' prout istud breve in se exigit & requirit: Quæ quidem loquela patet in quadam schedula huic brevi consuta. *Aliter.*

A. B. queritur versus C. D. de placito captionis, & injustæ detentionis averior' suorum. *Querel'.*

Plegii de prosequend' &c. (ut supra.)

Virtute istius brevis recordari feci loquelam, quæ est in com' meo sine breve Domini Regis, inter W. H. & A. D. de averiis ipsius W. H. captis & injuste detentis, ut dicit. Et record' illud habeo coram Justic' infrascript' ad diem & locum infracontent' sub sigillo meo, & sigillis A.B. C.D. E.F. & G. H. quatuor legalium militum de com. meo ex illis qui recordo ill' interfuerunt, prout patet in quadam schedula huic brevi annex' secundum exigentiam istius brevis, &c. *Aliter.*

Ad com' meum tent' &c. ut supra.

Virtute istius brevis mihi directi in pleno com' meo tent' apud castrum C. in comitat' Cantab' infrascript' (tali die & ann.) recordari feci loquelam unde interius fit mentio; quæ quidem loquela patet in quadam schedula huic brevi annexat'. Et recordum illud habeo coram Justic' infrascript. ad diem & locum infracontent' sub sigillo meo & sigillis W. H. E. R. &c. quatuor proborum & legalium militum ejusdem com' ex illis qui record' illi interfuer' & partibus infrascript' diem illum præfixi quod sint ibidem in loquela ill' prout justum fuerit prosecutur', prout interius mihi præcipitur. *Querel'. Aliter.*

Residuum

Scedul. Residuum executionis istius brevis patet in quadam scedula huic brevi annex'.

Querela. R. S. queritur versus T. E. de placito captionis & injustæ detentionis averiorum suorum.

A. B. Ar' Vic.

Virtute hujus brevis Recordari feci loquelam quæ fuit in Com. meo sine brevi Dom. Regis inter I. W. & H. S. infrascript. de averiis ipsius I. capt. & injuste detent; Et eisdem partibus diem & locum infracontent. præfixi, quod tunc sint ibi in loquela illa, prout justum fuerit, processurum, prout istud breve in se exigit & requirit, Cujus quidem loquelæ recordum huic brevi est Consut. &c. Liber Intr. fol. 570 d.

Qu. R. S. Queritur, &c. Ibid.

Upon the Recordare, the Sheriff is first to Record the Suit in full Court, and then to return the same under his own Seal, and the Seals of four Suitors of the same Court. And after the Sheriff is to Summon the Defendant to be there at the day of the Return thereof. *Issint il touts foits prefix un jour in Banco al parties.* Fitz. 70. b. Finch. 122. hic cap. 114. That the Sheriff may cause this Writ to be openly read in the same Court; so that the parties may have notice of the day of their appearance.

Mes Biens serra remove forsque le Pleint, coment que ils sont al issue. Fitz. 71. a. & 3 H. 6. fol. 39.

If the Return shall be ad Comitat' meum tentum, &c. Recordari feci loquelam quæ est in eodem Com. coram me; this is not good; for the Suitors are Judges there: And therefore the return must be, Recordari feci loquelam quæ est in eodem Comit. coram Sectatoribus Curiæ, and not coram me. 21 H. 6. Fitz. Retor. 17.

And the Schedule must be Ad Comit. meum tent. (tali die & Anno) coram, such and such, Sectatoribus Curiæ, and not coram me.

In a Recordari de averiis, it is a good Return for the Sheriff, quod Causa non est vera. 30 E. 1. Fitz. Retor. 114.

The Sheriff upon this Writ may return Tarde. Fitz. Recordare 8.

Note that a Recordare is to remove the Suit into the Kings Court, &c. out of the Court of Ancient Demesn, Hundred Court, County Court, or Lords Court, upon a false Judgment given in any of them.

But where the false Judgment is given in any other Court Baron then the County or Sheriffs Court, there it is called an Accedas ad Curiam. Fitz. 4. 13. 70.

If the Plaint be removed out of the County Court by a Recordari, &c. and the Recordari beareth date before the Plaint be entred in the County Court, and the Sheriff removeth it, it is good: But if the Record be removed out of the Court of another Lord, by such a Writ, bearing date before the Plaint be entred, it is not good. Fitz. 71. d.

Note that in the Writ de Accedas ad Curiam, the Sheriff must take with him four men of the same County: But in this Recordari fac' loquelam, the Sheriff needs not take any with him: But both these Writs must be returned under the Seal of the Sheriff, and the Seals of four of the Suitors of the same Court. Hic cap. 113. Fitz. 18. c.

Upon a Writ of Recordari fac. loquelam, directed to the Sheriff, although the Plaint or Suit be determined, yet the Sheriff is to make Execution, and Return of the Writ, &c. to require the view of the Plea, and to Record and Return the same, &c. Vide Dyer 268. Pl. 17. & Fitz. 71. a.

Redisseisin. The Sheriffs duty in executing this Writ. See hic cap. 93.

CAP.

CAP. 73.

Retorne de Replevin sur Retorn. habend. Averiorum.

PLeg' de prosequend' & de retorn' inde habend', si retorn' inde adjudicetur, J. D. R. R. *Repleg'.*

Virtute, &c. Repleg' feci infrascripto R. averia infrascript', prout in isto brevi mihi præcipitur: Et ulterius infranom' Domino Regi certifico, quod nullum aliud breve de infrascriptis averiis repleg' unquam præter istud breve mihi liberat' fuit, &c. Quære if this last clause be good: See hic infra 28 H. 6.

Virtute, &c. (tali die & anno) repleg' feci R. B. infranominat' averia sua infra specificat, quæ infranominat. T. M. & R. S. ceperunt & injuste detinuer. secundum formam hujus brevis, prout interius mihi præcipitur. Et infrascript. T. & R. attachiati sunt per centum oves precii 6 l. per T. F. ballivum, per placitum, J. T. & R. M. Et infranominat. R. B. attachiat. est per dict. ballivum meum per tres vaccas precii 3 l. per pl' prædict. J. T. & R. M. Et nullum aliud mandat. sive breve Domini Regis præter istud breve de averiis prædict. repleg. ante advent. istius brevis mihi unquam liber. fuit. *Aliter.*

Virtute istius brevis mihi directi deliberari feci infranominat. J. B. averia quæ T. M. cepit, & eidem T. M. in curia Domini Regis adjudicat. fuer. prout interius mihi præcipitur. *Aliter.*

A. B. Ar. Vic.

If the Defendant hath return awarded him, and he sues a Writ, de Returno habendo, and the Sheriff returns upon the plur. quod averia elongata sunt, &c. here he shall have a Scire facias against the pledges, &c. Fitz. 74. f. & 7 R. 2. Fitz. Wither. 11.

Upon a Replevin directed to the Sheriff, it seemeth that he needeth not to return the Writ, until the Pluries Replevin: But if at the Pluries he doth nothing, an attachment shall go out against the Sheriff, directed to the Coroners, &c.

Et nota que le Plt. poiet suer touts le brief, sc. le Replevin, Alias, & le Pluries, tout al un temps, & poet deliver eux al Vic. come a luy semble bon. Fitz. 68. c.

It seemeth that the Writ de Returno habendo, is not returnable. Fitz. Replev. 3.

Also note that the Sheriff before he maketh deliverance of any distress, &c. must not only receive of the Plaintiffs pledges de Prosequendo, but also pledges for the return of the beasts, if the return be awarded. And if the Sheriff taketh insufficient pledges de Retorno habendo, they are as no pledges: And he shall answer the price of the beasts, &c. sc. a Writ of Detinue lieth against the Sheriff who made the Replevin. Vide Br. Detinue 6. & hic c. 114.

Virtute, &c. Domino Regi certifico, quod post receptionem hujus brevis, per totam ballivam meam diligenter inquisivi, & nullo modo mihi constare potest, quod aliqua averia infranominat. W. P. capt. fuer. & injuste detenta per infranominat. J. N. prout in breve supponit. Ita quod executio istius brevis secundum tenorem & effectum ejusdem per me fieri non potuit, prout interius mihi præcipitur: Et ulterius Domino Regi certifico quod nullum aliud breve de plur. repleg. præter istud breve mihi unquam deliberat. fuit. (Quære de hoc, & vide, 5 H. 7. 27. hic postea.) *Plur. Repl'.*

In a Replevin the Sheriff returned (at the plur.) quod nullus venit ex parte quer' ad demonstrand' tibi averia: And he returned further quod nulla alia brevia inde ad suas manus devenerunt; And it was holden an ill return, and the Sheriff was therefore amerced, for it is a contempt in the Sheriff if one Writ comes to him; and he returns quod nulla alia brevia, &c. 28 H. 6. Br. 9. Fitz. Ret. 20. Vide Dyer 189. *tiel Retorne.* 21 H. 6.

Upon the Pluries Repleg. the Sheriff returned, that he could not make deliverance, &c. for that the Defendants claimed property therein, and thereupon a Writ de proprietate probanda was granted out to the Sheriff, assumptis secum custod. placitorum Coron. &c. commanding him to make deliverance to the Plaintiff, if it be found for him: And upon the property found for the Plaintiff, then also (if the Plaintiff shall find pledges de Prosequendo) the Sheriff ought to attach the Defendants, ad respondendum tam Domino Regi de contemptu, quam querenti de dampnis, &c. Regist. 83. 87. Dyer 172, 173. Br. Propr. probanda 1. 32, 40. & 49. Fitz. Repl. 12.

Mes nota que le trial del property in le County per brief de proprietate probanda nest que Enquest de office, & poet estre travers & trie arere, &c. Br. propriet. prob. 49. 1 E. 4.

And before the enquiry if the property be made by the Sheriff in his County-Court, the Sheriff is to give warning or notice thereof to the Defendant, to the end he may be present if he will. Regist. 83. 85.

And besides, the Sheriff must give warning thereof to the Plaintiff to be there to give in his evidence. 1 E. 4. 9.

Ante adventum istius brevis, Averia & catalla infranom. K. quæ W. C. cepit & injuste detenuit, ut dicitur, Elongata fuerunt per prædict. W. C. Ideo præfat' K. averia & catalla sua prædict. Repleg' non possum, &c. Averia elongat.

Nullum breve de averiis infrascript' repleg' præter istud mihi unquam liberat' fuit. Et ulterius Domino Regi certifico, quod ante advent' istius brevis averia prædict' elongat' fuerunt, & ad loca mihi ignota transmissa per infranom' J. T. Ita quod ea infrascript' W. nullo modo repleg. possum, prout interius mihi præcipitur. Aliter. Dyer 188.

Ante adventum, &c. averia infrascripta per infranom' T. C. elongata fuer' ad loca mihi incognita; Ita quod visum eorund' infranominat' A. H. & T. C. retornand' habere non potui, prout interius mihi præcipitur. Aliter sur 2. deliverance.

Virtute, &c. Domino Regi in Cancell. sua certifico quod averia & catall. per infranom. A. B. prius capt. elongata sunt ex com. infrascript. ad loca mihi incognita, per infrascript. T. R. Ideoq; averia & catall. præd. infrascript. R. retorn. non possum, prout interius mihi præcipitur. Aliter in Cancel.

Ante adventum istius brevis, averia infraspecificat. elongata fuerunt per infranom. J. M. ad loca mihi incognita, sic quod averia illa infrascript. N. M. retorn. non possum, juxta formam hujus brevis. Aliter sur 2. deliverance.

Upon

Upon a Pluries Repleg. out of the Chancery, returnable in Banco, the Sheriffs of London returned that they ought to make Replevin, by their custom, upon a Plaint in their Sheriffs Court, and not by Writ out of the Chancery; and this Return was holden to be insufficient (by all the Justices) and another Pluries Repleg. was awarded to the new Sheriffs, and Proces of contempt to attach the old Sheriffs. Dyer 245, 246.

Retorn. præcepti sur second. deliverance in Com.

PLeg. de prosequend. & de retorn. habend, &c. J. D. R. R. Virtute, &c. Ego W. A. unus ball. infranom. petii de J. T. & R.N. infrascript. deliberation. de averiis T. B. infrascript. viz. de tribus bobus precii cujuslibet bovis xx s. & duobus equis precii cujuslibet equi xx s. & renuere inde facere deliberationem, & prædict. averia elongata sunt ad loca mihi ignota, per quod inde deliberation. facere non potui, prout interius mihi præcipitur. Et præd. T. J. attach. est per unam crateram argenti, ad valenc. xx s. *Replevin.*

In Repleg. le plt. fuit Nonsue per que le def. aver brief de Returno Habendo, Et sur le Retorno Habendo, le Vic. retorne que le Plt. aver esloigne les avers, per que, &c. Ceo est bon retorne. Dyer 41. & 59. Fitz. 74. f.

Mes si le brief de Retorno Habendo soit agard al Vic. apres Second Deliverance preie per le Plt. le Vic. n'ad power de server le Retorno Habendo, mes le Second Deliverance. Dyer ibid. *C. nota que le Second Deliverance est un Supersedeas de le brief de Returno Habendo, & close le mains del Vic. issint que il n'ad authority de faire ascun Retorne sur le brief de Retorno Habendo.* Dyer 41.

Si le Vic. sur le second deliverance delivera les beasts al Plt. Et ne retorne le brief issint que le def. ne poiet aver Retorne, il avera son remedy vers le Vic. 8 R. 2. Br. Second deliverance 12.

Where the Sheriff taketh insufficient pledges, de returno habendo, they are as no pledges, Br. 2. *Retorn. des Avers.*

If a man hath a return adjudged for him, this is no satisfaction for the thing for which it is awarded; but the Defendant shall retain this as a pledge or gage until he be satisfied: But he hath not any property therein, so that if afterwards sufficient amends shall be tendred to him, he ought to accept thereof; otherwise the Plaintiff shall have a Writ of Detinue: Br. *6. 17.*

Br. 11. *Nota ou le tenant offer le rent, ou amercement,* tempore districtionis factæ *ou apres le distress prise, & le Seignior refuse, il navera Retorne.*

Fitz. 63. f. If the Sheriff, upon the Repl. Sicut alias, or plur. shall return that he hath sent to the Bayliff of the Franchise, &c. who hath made no return to him; or that he will make no deliverance, &c. Then the Plaintiff may have a Non omittas to the Sheriff, commanding him to enter the Franchise, and to make return: And if then the Sheriff shall not do this, the Plaintiff shall have an alias, and plur. &c. to the Sheriff:

Fitz. 68. f. And yet it seemeth that these returns, sc. quod mandavi ballivo libertatis, &c. qui mihi nullum dedit responsum or that the Bayliff will make no deli-

 verance,

verance, &c. are no good Returns: for by the Stat. of West. 1. c.17. it appeareth that the Sheriff, upon such returns made to him by his Bayliff, ought presently to enter into the Franchise himself, and to make deliverance of the Goods taken, &c. See the Stat. 52 Hen. 3. cap. 21. 3 E. 1. c.17.

Note that there be divers manners of causes, which the Sheriff may return upon the pluries, for which he cannot make Replevy or deliverance: see the Register, & Fitz. 73. g.

Also note that upon these returns following made by the Sheriff, the Plaintiff shall have a Capias in Withernam, directed to the Sheriff to take so many of the cattel of the Defendant, &c. sc. if the Sheriff upon the Plur. shall return, Fitz. 68. g. Withernam.

1. Quod præd. B. averia præd. A. cepit & ea fugavit, de com. præd. in com' S. per quod eidem A. Repl. non potuit, &c.

2. Quod mandavit ballivo libertatis, de R. cui retor' brevium, &c. qui respondit quod averia elongata sunt, &c. per quod non potest habere visum eorum; *Nec de faire deliverance.* Fitz. 68. g. Vide Fitz. 69. b. & 74. a.

3. That he himself cannot have the view of the beasts to make deliverance.

But in this former case it seemeth the Return must be further, sc. Quod accessi ad locum, & visum habere non potui; For otherwise it may be that he could not have the view of the cattel, for that he came not where the cattel were. 2 E. 3. Fitz. Ret. 76.

And yet if the cattel be driven into a Fort or Castle, the Sheriff may return quod averia elongata sunt. Finch. 354.

4. That after the taking, &c. the Defendant hath eloigned (or conveyed away) the cattel out of the Bayliwick, whereby he cannot make deliverance.

5. That the Defendant hath eloigned the cattel to places unknown, by reason whereof he cannot have view of the cattel to make deliverance.

6. Quod mandavit ballivo libertatis, &c. who answereth that the Defendant hath imparked the cattel within the Rectory of the Church of C. so as he cannot make deliverance, &c.

In a Repel' it is a good return for the Sheriff to say, that the Defendant (or his Bayliff, or servant, quære) claimeth property in the goods, &c. Sed nota *que si le defendant in Repleg. claime property fauxment, & issint trove* in proprietate probanda, *il serra fine, & imprison.* Co. 8. 60. a. Fitz. proprietate probanda 1. plus hic c. 114. Br. 46. 108.

And note that a man cannot claim property by his Bayliff or Servant, for that if the claim be found to be false, the Lord cannot be fined and imprisoned. Vide Fitz. propriet. proband. 6. & Br. Retor. 108. & Co. L. f. 145. b.

In a Repl. it is no good return to say that there are no such cattel or goods found within his Baylıwick. Br. 89. 5 H. 7. 27. Fitz. Ret. 116.

But the Sheriff may and ought in such case, to return, Quod averia sunt elongata. 5 H. 7. 27. Br.

The Sheriff returneth that the Defendant took the cattel as Bayliff of such a Town, for the Kings debt, and sold them, &c. Or returneth that the Defendant delivered the cattel to another in execution by force of a Recovery; these are no good returns, but the Sheriff must make his usual return. Fitz. propriet. probanda 5.

Also

Also the Sheriff may return, Quod nullus venit ex parte querentis ad demonstrand. sibi averia: Br. 9. 89. Kiel. 119.

Br. Offic. 10. Br. retor. 104. The Officer which maketh or serveth a Replevin, needs not to serve it, but only of such cattel, &c. as the Plaintiff in the Replevin shall shew unto him: And yet the Officer ought to take notice what and whose cattel, &c. they be, which he shall repleyy at his peril. Vide Kiel. 119. pro & contra, & Fitz. Barr. 191. & Tresp. 243.

But yet by some opinions, if in a Repleby the Plaintiff doth shew to the Sheriff the beasts of a stranger, and the Sheriff delivereth them, the Sheriff is no Trespassor herein; for the Sheriff is not bound to make Repleby, but by the shewing of the Plaintiff (and then the default is in the Plaintiff, and not in the Sheriff.) And again the Sheriff cannot by common reason take knowledge which are the beasts or cattel of the Plaintiff, and which are not. Kiel. 129. vide hic c. 22. & 30. other like cases.

20 E. 4. 11 Br. 100. The Sheriff returns, Quod averia elongata sunt ad loca incognita; this is a good return: but if the return be, ad loca incognita infra com. meum, the Sheriff shall be amerced for such a return; for he is to take notice of them, if they be within his County.

Br. 125. In a Repl. at the Pluries, the Sheriff returned that the cattel are dead, and it was holden to be a good return.

Br. 125. If he which is distrained, take his cattel again, and yet sueth a Repleby, the Sheriff may return the special matter.

If the Sheriff returneth that the cattel are in a Fort, Castle, or Park, &c. so that he could not make deliverance, this is not good, hic c. 36.

CAP. 74.

Retorna brevis de restitution.

Virtute istius brevis mihi direct. (tali die & anno, &c. infrascript.) tenementum infrascript. cum pertin. reseisivi, & infranominat. T. & H. plenam possessionem & seisinam inde restitui, prout interius mihi præcipitur. *Restitut.*

See hic antea, habere fac. seisinam, & habere fac. possessionem.

Retorna brevis de bonis Restituendis apres exigent. Vide hic c. 59.

Retorna de Resummon.

Executio istius brevis patet in quadam scedula huic brevi annex. *Resummon.*

A. B. Ar' Vic'.

Nomina Jur. 24. Milit. unde in brevi huic scedulæ annex. fit mentio: R. M. de N. Ar.

T. B. de M. Ar. &c. (ad numerum 24.

Quilibet Jur. præd. separatim Resum. est per H. R. & M. N. bonos summon.

A. B. Ar' Vic.

Sanctuary. Ante adventum istius brevis mihi direct. J. S. infranominat. intravit Sanctuarium Sancti *Petri* Westm. in com. Midd. & eodem com. adhuc moratur, per quod corpus prædict. J. S. coram Justic. infrascript. ad diem & locum interius specificat. habere non possum prout, &c.

Upon a Capias, the Sheriff returned that the party was Verger in the Church of Sarum, and abode within the Precinct of the Church, and being a Sanctuary, he therefore returned, Non est inventus, and it was holden to be no good Return, for that he might have served this Process in the Church. 6 H. 4. f. 3.

CAP. 75.

Retorne de Scire Facias.

A Scire fac. is a Writ judicial, and is usually to warn a man to come and shew cause to the Court, why execution of a judgment which is past, should not be done. Na. Br. *163*, *164*.

And the Sheriff upon this Writ, is only to warn the party to appear (before the Justices) &c. according to the Writ, and then to return the same. Ibid.

Scire facias. Virtute istius brevis mihi directi, per A. B. & C. D. probos & legales homines de balliva mea, Scire feci infranominat. J. S. quod sit coram Justic. Domini Regis, (vel coram Domino Rege, vel coram Baron. Domini Regis) ad diem & locum infrascript. ad ostend. & proponend. si quid pro se habeat, vel dicere sciat, quare, &c. (according to the matter contained in the Writ,) prout mihi interius præcipitur. Scire feci. Com. Banco. Banco Regis. Eschequer.

Note that in a Scire fac. to execute a Recovery, the Garnishment ought to be upon the land. 22 H. *6*. 38.

Garnishment veigne del French parol Garnir. id est, to furnish. *Come si action de detinue de Charters soit port envers un, & le def. plead que les Charters fuer. deliver a luy per le plt. & per un auter, sur certein conditions, & preia que l'auter poiet estre Garny* (sc. warned) *de plead ove le plt. si le condition soit performe ou nemy & sur ceo le brief de Scire fac. issue vers luy, & ce. est appell Garnishment; & l'auter quant il veigne pleader ove le plt. & ce. est appell enterpleader,* Minsh.

(a) Vel Justic. nostris.
(b) Vel coram Nobis.

Note that the appearance Coram { Justic. Dom. Regis, (a) / Domini Rege, (b) / Baron. Domini Regis, / Domino Rege, in Cancellaria, — } is in { The Court of C. Pleas / The Kings Bench. / The Exchequer. / The Chancery. }

Retorn' de Nihil, super Scire fac.

Nihil. INfranominatus A. B. Nihil habet in balliva mea per quod ei Scire facere possum, neque est inventus in eadem.

A. B. Mil' Vic.

Aliter A. D. & cæteri def. infranom. Nihil habent in balliva mea per quod eis Scire facere possum. Liber. Intr. fol. 591. a.

Upon a Scire fac. against the Garnishee, the Sheriff returneth Nihil habet, &c. this is not good, except he returneth further, Nec est inventus, 1 H. 5. Fitz. Ret. 38. Lib. Intr. 591.

In a Scire fac. the Sheriff hath nothing to do but only to warn the party (hic c. 55.) and this seemeth properly to be called Garnishment.

Fitz. Ret. 83. By the Scire fac. the Sheriff usually is commanded to give knowledge to the Defendant, that he appear at such a mans suit in such a Court, at a certain day, there to do that which the Writ requireth, &c.

And in a Scire fac. the Sheriff returned Scire feci A. ad essendum coram Justic. apud Westm. secundum tenorem brevis: and for that he did not say, ad faciendum prout illud breve requiri, he was amerced, 15 E. 3. Fitz. Retorn. 108. & 119. For the Sheriff was to warn the party ad essendum, & faciendum quod breve requirit; And that Garnishment also must be by (or in the presence of) two others, and must be so returned, sc. Scire feci A. per J. D. & J. C. probos & legales homines, &c. ut supra. Vide Fitz. Retorn. 67, 77. 80, 115, 119. & hic c. 31.

But the Sheriff needs not to name or shew in what Court the party is to appear, as it seemeth by the book, 16 E. 3. Fitz. Ret. 78. tamen quære.

Where Tenant for life prayeth in aid of him in Reversion, in a Scire fac. against him, the Sheriff may return, that he was garnished in the land in Reversion, which is terra petita, 35 E. 3. 26.

In a Scire fac. the Sheriff may garnish the party, by his person, or by his lands or goods as it seemeth. 32 H. 6. 13. Kitch. Ret. 54.

Sur appar. Virtute, &c. Scire feci infranominat' J. S. & J. D. quod sint coram Justic' Domini Regis infrascript', ad diem & locum infracontent', ad respondend' R. H. infranominat'.

Ad audiend. Record. Virtute, &c. Scire feci T. A. & E. uxori ejus infrascript', (per A. B. & C. D.) quod sint coram Domino Rege, ad diem infrascript' ubicunque, &c. ad audiend' record. & processum, unde illud breve facit mentionem; Et ulterius ad faciend. & recipiend. (omnia & singula) prout illud breve exigit.

Vers Exec'. Virtute, &c. Scire feci, *W. B.* administrat' sive executor. bonorum & catal' quæ fuer. *T. P.* infranomin. per *W. G.* & *G.* K. probos & legales homines de ball' mea, essendi coram Domino Rege, (vel Justic') ad diem infranom'. Neq; sunt plures administr. aliquorum bonorum & catall' quæ fuerunt ejusdem *T. P.* in ball' mea, quibus aut cui ad præsens scire facere possum.

Nulli sunt executor. de *E.* infranom. neque admin. bonorum & Catallorum quæ fuerunt ejusdem *E.* Nec hæred. neque tenent. terrarum & Tenementor. quæ sua fuer. in Balliva mea, quibus aliquo modo Scire facere possum : this is good.

Aliter. Virtute, &c. Scire feci T. V. infranominat. quod sit coram Just. infrascript. ad diem & locum infracontent' per J. S. & R. G. ad faciend. ea quæ illud breve in se exigit & requirit, &c.

In Cancell'. Virtute, &c. Scire feci W. C. militi infranom. quod sit coram Domino Rege in Cancellar. sua ad diem infracontent. ubicunq; tunc fuerit in Anglia, ad ostend. & proponend. prout istud breve in se exigit & requirit, per J. M. & W. D. probos & legales homines ball' mei, juxta form. hujus brevis. Co. 1. 161. 2.

Virtute brevis istius mihi direct. 12. die Aprilis, anno Regni dicti Domini Regis vicesimo supradict. per J. B. gener. & T. W. gener. probos & legales homines de Balliva mea Scire feci eisdem *Tho. P.* & *Marg.* essend. hic modo ad hunc diem, ad informand. dictum Dominum Regem & consilium suum, prout breve prædict. in se exigit & requirit, ac prout per breve illud mihi præceptum fuit.

Scire feci eidem J. S. essendi coram, &c. ostens. in forma prædicta per R. F. & T. G. probos, &c. Liber Intr. 217, 218.

The Sheriff may return Tarde, &c. in a Scire Fac. Libr. Intr. 458. b.

In a Scire fac', It is a good return that the party is dead. Br. 125. Fitz. Retor. *69*. Br. Recog. 2. Libr. Jur. 458. b. & 591. a.

In a Scire fac. to have return of Cattel after the Return awarded, the Sheriff may return that the Cattel are dead. 13 R. 2. Br. Averment *36*.

In a Scire fac. against a Parson of the Church, the Sheriff returneth that the Parson had Resigned, &c. This is good. Hic cap. 55.

In a Scire fac. against an Abbot, the Sheriff returned that he was Deposed ; this was a good Return ; for it was as much as if he had returned him dead. 1 H. *6*. 2. 2 H. 7. 10. Fitz. Retor. 1.

In a Scire fac. against the Husband and Wife, it is no good Return to say they are Divorced. See hic cap. *36*.

The Sheriff returneth Scire feci hæredibus & terræ tenent. without naming the Heir, or terr Tenants, by their proper names ; and the Sheriff was therefore amerced. 41 E. 3. Fitz. Retor. *69*.

In a Scire fac. the Sheriff returned Scire feci, A. B. infranom. per H. H.

H. H. & T. D. without these words, Probos & legales homines, &c. Vide hic c. 36.

Upon a Scire fac. &c. the Sheriff returneth, Vobis certifico; or, Scire feci quod sit coram vobis, &c. This word vobis, in both Cases shall be referred to the Justices mentioned in the Writ; And yet it were better if the Return were Vobis Justic. infrascriptis, &c.

In a Scire fac. to execute a Judgment, or Fine, the Sheriff ought to return the Names of the Summoners and Mepors. Br. Retor. 86.

In a Scire fac. L. B. Magistro aulæ de C. in Cantabr. & Scholaribus ejusdem; the Sheriff returned, Quod Scire fecit Magistro, without saying L. B. not speaking of the Scholars, and it was holden void.

In a Scire fac. E. Prioresse de W. the Sheriff returned, Scire feci Prioresse de W. without saying E. Prioresse, and it was void.

If the Sheriff shall return Garnishment (in a Plea of Land) whereas no Garnishment was made, an action of Deceit lieth against the Sheriff, &c. Stat. 2 E. 3. cap. 17.

In a Scire fac. against two, the Sheriff may not return that one of them was Garnished, and that the other Nihil habet, &c. For although he hath nothing, yet the Sheriff ought to have garnished him by his person. 1 H. 5. 13. Kitch. 54.

In a Scire fac. against two, the Sheriff returned Scire feci modo & forma prout, &c. And it was holden good, though he returned not severally Scire feci. 2 H. 4. 14.

Infranom' A. D. Nihil habet in Balliva mea per quod ei Scire facere possum: Neque est inventus in eadem: this is a good Return upon a Scire fac. against the Garnishee; the Sheriff returneth Nihil habet, &c. this is not good, except he returneth further, Nec est inventus. 1 H. 5. Fitz. Retor. 38.

Upon a Scire fac', Two Nihils returned, Countervails Scire feci: See Br. 101.

Return de Scire fac. versus Clericum, vide Plus hic c. 36 & 55.

CAP. 76.

Retorne brevis de seisina.

Brief de seisin. Virtute istius brevis mihi directi vicesimo die Octobris anno infrascript', habere feci infranominato N. S. plenar. seisinam de & in tenement' infraspec. cum pertinentiis, prout interius mihi præcipitur.

A. B. Ar' Vic'.

See plus in Retorn. de habere fac' seisinam, hic. fol. Et Retorn. de Seisin in Dower.

Note that in such Cases, the party which recovereth Dower, &c. cannot enter, but must first have seisin delivered to them by the Sheriff. Plo. 529. b.

And the Sheriff may put the party in possession or seisin of a house or land by a twig, clod, or the like.

Also if a man recover Rent, the Sheriff may put him in Seisin thereof by *Parol*, or by any parcel of the Land out of which the Rent is issuing, &c. See hic antea Retorn. de Habere fac. Seisinam. Fitz. 179. h.

In Writs of Seisin, it is no good Return for the Sheriff to alledge Non tenancy in him whom the Writ or Record supposeth to be Tenant. Plo. fol. 14. a.

The return of a Significavit.

Significav'. Virtute istius brevis mihi directi, cepi corpus infranominat' *A. B.* cujus quidem corpus remanet in prisona Domini Regis castri sui C. sub salva custod. mea, donec Sancta Ecclesia tam de contemptu quam de injur. ei illat' ab eo fuer. satisfact', prout istud breve in se exigit & requirit.

A. B. Armig. Vic'.

The return of a Significavit *with Proclamation.*

Infranominat' *A. B.* non est inventus in Balliva mea, sed virtute istius brevis mihi direct' in pleno comitatu meo tent. apud Castrum Cantab. in comitatu infrascript. decimo quinto die *J.* anno infrascript. publicè proclam. feci quod prædict. *A. B.* infra sex dies proxim. post proclamationem illam, corpus suum reddat in forma infrascript. prout breve istud in se exigit & requirit.

A. B Ar' Vic.

Secunda Superoneratione.

13 E. cap. 8. By the Statute 13 E. 1. upon a Writ de Secunda superoneratione pasturæ, the Sherift in the presence of the Parties being summoned (if they will come) shall inquire upon the second surcharge, which if it be found, it shall be returned (before the Justices) under the Seal of the Sheriff, and the Seals of the Jurors. *Secunda superoneratione.*

Nota que al Common Ley si certein Tenants ussent eme Common Appendant in Common Wast, & un des Tenants ust mise in le Common plusors beasts que il duist, les auters Tenants averont brief de Admeasurement de pasture pur luy admeasurer. Et sil apres cel Admeasurement voiet auterfoits surcharge le Common, les auters tenants averont lour brief de Admeasurement, si com. ils aver. de le premier Surcharge.

Issint sil ust surcharge le Common xx foits, ou plus, il n'avera greinder punishment que sil n'aver. surcharge forsque 1. *foits: Et pur ceo (& al intent que homes serra le pluis tost garnie de faire perde as autres) le Stat. de* Westm. 2. cap. 8. *done remedy pur ceo brief de Secunda Superoneratione, in tiel manner.*

Si le premier Admeasurement fuit fait devant les Justices, donqs (si cestuy que un foits ad estre issint admeasure, en apres sil auterfoits surcharge, de cel second Surcharge) les autres Tenants que sua le premier brief avera un brief Judicial, &c. direct. al Vic. luy Commandent que il aler al lieu, &c. pur Enquirer de cel. 2. *surcharge: Et si ceo soit trove, le Vic. Retorn. ceo in le Common Place, desouth son Seal, & les Seals de les Jurors.*

Mes le Vic. doit faire cel Enquiry in le presence del parties, sils voil vener.

Et pur ceo le vic. doit Summon ou garnier les parties, d'estre devant luy al temps de son enquiry; Et la ils averont lour challenge al Enquest (sc. *a les parols, ou al Array.) N. Br.* 73.

Mes si le premier Admeasurement fuit fait in le County Court, donque apres le second surcharge, les autres tenants que sua le primer brief devant, avera de cel. 2. *surcharge, un brief Original, (que issera hors del Chancery) & ceo brief auxi commander le vic. de aler in person al lieu, &c. pur Enquirer de ceo second superoneration, & des avers mise en le Common ou pasture, oustre le due Number que il doit de droit aver, ou per le value del eux.*

Et icy le vic. serra charge (al fine del Ann. in le Eschequer sur son Accompt, &c.) car ceo brief Original serra inroll, & le transcript serra mise in le Exchequer, &c.

Mes si cel Enquiry fuit sur brief Original (que n'est que un Commission al vic.) les parties ne serra mie garnies ou Summon, sicome ils serra quant le brief est Judicial.

Nota ou le Statute voet, Si le (premier) admeasurement fuit fait devant les Justices, &c. Ceo est d'estre intend, quant le brief de Admeasurement est remove hors del County en Common Bank, per un Pone, car il est un brief vicountiel & nient Retornable, &c.

Et ou le Stat. voet, si tiel Admeasurement soit fait in le County, &c. ceo est lou il nest pas Remove, mes demur la: Et ceo serra determine la.

Mes si le brief ne soit remove, mes demur in le County, la le Tenant ne poiet pleder Jointenancy, Ne poiet voucher a garr. Ne avera le view ou autres tiels advantag

And note that by the form of the Writ de Secunda Superoneratione, the Sheriff in both Cases ought in proper person to go to the pasture or ground surcharged. Fitz. 162. e.

But yet if he cometh to the place, &c. and then causeth the Jury to see the same, and to see the number of the Cattel of the Defendant which are put therein, it seemeth he may make his Enquiry elsewhere.

Also if upon such Enquiry it be found against the Defendant, he in both Cases shall not only yield damages to the other parties, but also shall forfeit to the King all the Cattel which he put into the Common or Pasture, above his due number (after Admeasurement once made;) And the Sheriff upon his Accompt shall be examined upon his Oath, how many Cattel of the Defendant he found in the Pasture above the one Number; and shall be charged to answer them, or their price, to the King. Stat. Westm. 2. cap. 8. Fitz. 326. &c.

And so in this Writ de Secunda Superoneratione, whither it be Judicial, or Original (ut supra,) this order is to be observed by the Sheriff, sc. when he hath assembled the 12 men (or Jury,) the parties are to shew and deliver their evidence and proofs, and according as the Jury shall find, so shall be done.

And there shall be Indentures made of their Enquiry, and the seals of the Sheriff and of the Jurors shall be put thereto (as to other Enquiries.) And this the Sheriff shall Return before the Justices.

Nota que le value de tiel Cattel ove queux le Pasture fuit surcharge, serra Estreate in le Eschequer, per les Justic. si fuit devant eux.

And the Sheriff may remove or drive away from off the ground, the Cattel so surcharging; and may seize them for the King as forfeit, and so keep or sell them, and answer the price.

CAP.

CAP. 77.

Retorn' Brevis Orig. in transgress. si defend. sit insufficiens.

Pleg' de prosequend' { J. D. R. R. — Trespass.

And this return the Plaintiffs Attorney useth to make. See hic cap. 56.

Infranominat. *H. B.* & *C. D.* nihil habent in balliva mea per quod attach. (vel distring.) possunt, (or, potest, if it be but against one Defendant.)

And if there be more Defendants then two, then you must name but one, & cæteri defend. infranominat. nihil habent in balliva mea, per quod attach. possunt.

In trespass, Nihil habet &c. is a good return, without saying, nec habuit post receptionem brevis ; or nec habuit die quo,&c. Fitz. Ret.30.

But if the Defendant be sufficient, then the Return may be thus:

Pleg. de prosequendo { *J. D.* *R. R.*

vel sic. Infranom' *H. B.* (the Defendant) attachiat' est per Pleg. { *A. C.* *B. H.*

Aliter. Infranominat. *H. B.* attachiatus est per unum bovem precii xx s. Car le Attachment poet estre per Pledges ou per Biens. Vide hic cap. 51.

In Trespass (sc. Capias agard) The Sheriff Returns, Cepi Corpus. Fitz. Retorn. 71. & Attorn. 9. 10. & 54.

Retorn' brevis ad Inquirend. de dampnis in transgress.

Executio istius brevis patet in quadam inquisitione huic brevi annex'.

Cantabr. Inquisitio, &c. qui dicunt super Sacramentum suum quod *W. B.* in dicto brevi nominat' sustinuit dampna occasione transgr. in eodem brevi spec' ad 20 s. & pro misis & custagiis suis per ipsum circa sectam suam in illa parte apponit' 20 s. In cujus rei testimonium, &c.

Aliter. Executio istius brevis patet in quadam Inquisitione huic brevi annex.

A. B. Ar. Vic.

Inquisitio, &c. Qui dicunt super Sacramentum suum,quod *W. B.* & *A.* uxor ejus, in dicto breve nominat' sustinuer' dampna occasione transgress. in eodem breve specificat',ultra misas at Custagia suas per ipsos circa sectam suam in hac parta appoit. ad 10 s. Et pro misis & Custag. illis ad 6 s. 8 d. In cujus rei testimon', &c.

In this Writ to enquire of Damages in an Action of Trespass, the Jury may not, nor cannot find, that no Trespass is done: Neither may the Sheriff make such a Return. Pasch. 7 Ed. 6.

But

But if the Jury will find no Damages, the Sheriff may make his Return accordingly. See hic cap. 36.

CAP. 78.

Retorn' de venditioni Exponas.

LE Vic. retorne sur un Fieri fac'. Quod cepit de bonis le def. certein biens ad valenc', &c. ad quod non invenit Emptores, Sur que issuit un venditioni Exponas retor', &c. a quel jour le Vic. retorne Quod bona non fuer. capta per ipsum nunc Vicem. Sed per quendam *T. S.* nuper Vicecom. predecessorem, &c. Ideo bona illa venditioni exponere non potuit; **this is a good Return:** Et sur ceo un brief fuit agard a distr. nuper Vicecom': ita quod bona illa vendition' exponat,& denarios inde provenientes deliberar' fac. præfato nunc Vicecom', quod ipse Vic. denarios hic Coram Justic' habere possit,&c. ad reddend. præfato querenti debitum & dampna sua, &c. 32 H. 6. Fitz. Proces 99.

Et nota que le Anc. Vic. poet vendr' les biens in cee case. Vide hic cap. 2. *Ayers* **Case.**

Retorn' de Venire fac. Def.

Venire fac. def. Infranominat' *J. B.* nihil habet in balliva mea per quod potest attachiari; vel ubi eum Summon' possum.

For upon the Venire fac. **if the Defendant be sufficient, the Sheriff may return him Summoned, or Attached.**

Note that the Sheriff upon the Venire fac. jurat', **must make and indorse his Return, together with his Name, &c. in such manner as is here before set down.** Co. 5. 41.

He must also return 24 Co. 5. 36, 37. **Because some may make default, and some may be challenged, &c.**

If any of the Jurors be misnamed either in Christian or Sirname, it is Erronious. Co. 42 53.

Virtute istius brevis mihi directi venire feci coram Domino Rege apud Westm. ad diem infracontent' *J. B.* sicut interius mihi præcipitur.

Alias. Infranom. *J. S.* Attachiat. est essend. coram Justic. infrascript. (tali die, &c.) ad certificandum secundum formam hujus brevis *P. K.* & *J. W.*

Alias. Infranom. *J. S.* attach' est per Pleg' viz. { *R. Den.* / *Jo. Fen.* }

Nota sur ceo, si le defendant soit retorne Nihil al primes, donque issuer Capias, Alias, Pluries, & Exigent.

Mes si le defendant soit retorne sufficient,& fait default, donque un Distringas *serra agard.*

Retorn de Venire fac. Jurator.

Venire fac' Jurator. Executio istius brevis patet in quadam pannella (or in quodam panello) huic brevi annex'.

A. B. Ar' Vic.

Nomin. Jurator' inter *A. B.* querent', & *C. D.* defend. in placito transgressionis.

Then

Then write down the names of twenty four Jurors thus;

A. W. de E. gener' } & sic ad numerum 24.
F. C. de W. Yeoman. }

If it be upon a *Venire attachiatus est*, if upon a *destringas Manucaptus est*.

Quilibet Jurator' prædict. per se separatim { *J. D.*
Manucaptus, or attachiatus est per pleg. { *R. R.*

A. B. Ar' Vic.

Note that the Sheriff shall return no Juror without some true and certain Addition. Hic cap. 85.

He shall not return the same which had passed in a former Enquest for the same cause. Fitz. Chall. 1.

37 H 6. f. 12. Where the parties shall admit a Visne, although there be none such, the Sheriff cannot return that there is none such, but shall make his panel de corpore comitatus. Vide plus Co. L. 125. b. & scribe hic.

And yet in an Appeal, the Sheriff returneth Jur' de Vicineto de D. and the new Sheriff returned upon the Distr. that there is no such Visne, and it was holden that he might so do. 3 H. 6. fol. 58. Er. Retor. 5.

K. Retorn. 19. Hic cap. 90. Note that in a Venire facias Jurator' no issues shall be returned; but otherwise in a Distring', and Habeas corpor', And yet if upon a Distring' Jurator. the Sheriff shall return no issues, and a full Jury shall appear, it seemeth to be no Error. See hic postea Issues upon Jurors.

Upon a Venire facias 12. liberos, &c. the Sheriff returned Venire feci, & non executio istius brevis: And also he returned but twelve (whereas he should have returned four and twenty) although the writ be 12 liberos, &c. and also he returned the Names of the Jurors upon the back of the Writ, and not in a Schedule, as the course is; and for these causes, he was caused to amend the same. 2 H. 7. 8. Er. 84. Fitz. Retor. 34.

Retorn' de Habeas Corpor' Jurator.

Executio istius brevis patet in quodam panello huic brevi consut', vel annex'. *Hab. corp' Jurat.*

Nomina Jurator' inter *A. B.* querent', & *C. D.* defend. in placito debiti, &c.

Then write down the names of the Jurors thus,

A. B. de S. gener' } & sic ad numerum 24.
C. D. de F. gen', &c. }

Quilibet Jurator' prædict. per se separatim { *J. D.*
Attach. or manucapt' est per { *K. R.*

Exitus eorum cujuslibet -- xs. (or more according to the Statutes.)

Note that upon the Return of this Writ, the Sheriff is to return issues upon every person.

Ceo breve de Habeas Corpora Jur. *gist quant un Jury, refuse de vener sur le* Venire facias, &c. *Vide Termes del Ley, car pur ceo que a le primer Summons de les 24 Jurors, la est nul punishment inflict sur eux sils ne veigne, ils* rare

aut nunquam *appearont sur le primer brief*; *Et sur lour default un* Habeas Corpus, *ou* Distringas *issuer al Vic. &c. Ba. V.* 24.

In this Writ of Habeas Corpora; no more than two Manucaptors are to be returned. In a Decem, or Octo tales, there ought or need to be returned no Manucaptors; And yet these things are used in divers places, but are void. Kit. Ret. brevium fol. 20. & viel Retor. Br. 141.

Note that upon a Habeas Corpor' Jur', the Sheriff ought to return them attached, and not to return quod habet corpora eorum. 2 H. 7. Br. 84. Fitz. Retor. 34.

Retorn' de Distring' Jurator'.

Distring' Jur'. Executio istius brevis patet in quodam panello huic brevi annex'.

And then return or set down the names of the Jurors, ut supra.

Manucaptores Jurat' præd. & eorum cujuslibet. } *J. D.* *R. R.*

Exitus eorum cujuslibet— 10 s. (or more according to the Statutes) it seemeth also the Sheriff ought to return Pledges of the Manucaptors.

A. B. Ar' Vic'.

Upon the Distring' Jurat' the Sheriff ought to return the names of the Manucaptors of the Jurors, ut supra Br. Retor. 86.

Also in a Distring' Jurat. per omnes terras, &c. the Sheriff ought to return issues ut supra, &c. 2 H 7. 8. Fitz. Retor. 34.

Upon the Distring. Jurat. where there were Knights and Esquires, &c. and the Sheriff returned but 8 d. upon every Juror, and was therefore amerced. 2 R. 3. fol. 13.

Upon the Distring. Jurator. if the Sheriff returneth too small issues, he is punishable by the Stat. of Westm. 2. see hic cap. 89. & 90. where these issues are set down in certain by later Statutes.

But note that in the first Venire fac. Jurat', it is not material nor good to set down Manucaptors, for that by such mainprise, you shall cause the Jurors to lose issues, which is not required at the first time. K. Ret. 20.

Upon the Distring. Jurator': the Sheriff returned Manucaptores Jurator.) but not the Pledges of the Manucaptors, and it was holden to be insufficient. 3 H. 7. 14. Fitz. Amend 5.

Which then must be in this manner as it seemeth, sc.

Quilibet Manucaptorum præd. attachiatus est per Pleg. *J. D.* & *R. R.*

So that upon the Distring. Jurator. the Sheriff must return the Names of the Manucaptors of the Jurors, and also he must return issues upon the Jurors, and also he must return Pledges, and the Names of the Pledges of the Manucaptors, otherwise the Proces is not served. Br. Retor. 86. Fitz. Amend 5.

At the Distringas Jur. the Sheriff returned Nichil habet upon one of the Jurors, and was therefore amerced. Fitz. Retor. 13.

At the Distring. the Sheriff returned, that as to some of the Jurors that the Writ was served by him, and as to the rest mandavi ballivo libertatis, &c. and was therefore amerced; for that the Writ could not be served by two Ministers. Fitz. Retor. 14. hic cap. 39.

Et ceo Distring' Jurat' *issera perpetualment, tanque ils appear, & pur ceo est dit Distress infinite*, Fitz. 59. b. Regist. 77. b.

2 H. 7. 8. Br. 84. In a Venire fac. the Sheriff returned the names of twelve only, and on the back of the Writ, and not in a schedule as the use is, also he returned Venire feci, and not Executio istius brevis, &c. And it was agreed by all the Justices of both Benches, that they would not change the ancient course, for the mischief which might follow thereon, for if twelve only shall be returned, no man shall have a Jury without a Tales, if any be challenged; and therefore they caused the Sheriff to amend his return, upon pain of amerciament, and yet the Writ is, Venire facias 12 liberos & legales homines, &c.

Co. 5. 36. & 37. *Sur le* Venire facias *forque 12 sont retorne, & 12 de eux appear, & done lour verdict, ceo est error, uncore ceo est remedy per les Statutes de Jeofails*, sc. de 32 H. 8. & 18 Eliz.

Co. 8. 162. & 163. *Mes si sur le* Venire facias *nul retorne est indorse; ou que le Vicont ne mut son nosme al retorne del Jury; ou que le retorne del Jury est per le Coroner, l'ou doit estre per le Vicont; ou e converso: ceux cases ne sont remedy per ascun Statut de Jeofails, mes remain nient amendable.*

20 E. 4. 11. Br. 114. Upon a Habeas corpora Juratorum, or Distring' Jurator. the Sheriff may return that some of them are dead, and it is good: And if a Distr', or Decem tales shall go out, the Sheriff may return that others of them are dead, and so upon every Writ.

And note that the Sheriff upon the Habeas Corpora Jurator', or upon the Distringas Jurator. ought to return the names of all that were in the Venire fac. 22 H. 6. fol. 45. & 37 H. 6. fol. 12. Kitch. retorn. 45.

Also upon the Habeas Corpora Jurat. As also upon the Distring. Jurat. the Sheriff must return reasonable issues, which issues are now by Statutes set down in more certain. See hic cap. 90, 91.

The Sheriff may return Tarde, upon the Distring. Jurat': and upon the Decem Tales, and then the Jury shall lose no issues, quod Nota K. 20. Fit. Retorn. 37. *Tarde.*

As thus; Quoad distringend. J. M. & alios Juratores infrascript', essend. coram Justiciariis, &c. die & loco infrascript', vobis significo, quod illud breve adeo Tarde mihi liberat. fuit, quod illud propter temporis brevitatem exequi non possum ad præsens, Sed de novo apposui decem tales, vel octo tales (ut prox. sequent.) prout in isto brevi mihi præcipitur, &c. A. B. C. D. E. F. &c.

Sed quoad decem tam milites quam alios probos & legales homines de vicineto infracontent' inter Jurator' infracontent. ponend', Executio istius brevis patet in quadam scedula huic brevi consut', &c.

Quoad distringend. R. L. & omnes alios Jurat. infrascript. essend coram Justic. infrascriptis, ad diem & locum infracontent'; Illud breve adeo tarde mihi deliberat. fuit, quod propter temporis brevitatem executionem inde facere non potui: Sed quoad append. Decem Tales executio inde patet in quodam Panello huic brevi consut'. *Aliter.*

Retor. de habere fac. visum. Vide hic antea fol. *View.*

Thel. 386. Where a man (by his Writ) demands a Carue of land, the moiety thereof may be put in view, and good. 6 E. 3. fol.

11 E. 3. F. Dower 63. Where a man demands a house, and ten shillings rent, if nothing be put in view but the house, it is not good. 5 E. 3.

If a man demands a Mannor, and the tenements put in view are but a house, and a Carue of land of another name than the Mannor is, it is not good. 6 E. 3. Fitz. Brief 727.

Although there be more put in view, than is demanded, yet it seemeth good. 18 E. 3. 22. Fitz. Brief 357. but quære, for the contrary is holden, 19 Ed. 3. f. Br. 468. 20 E. 3. fol. Fitz. Brief 373. 375.

Vi Laica removenda. Note that upon the Writ De vi Laica Removenda, the Sheriff ought not to remove the Incumbent, who is in possession of the Church, be he in possession of right, or of wrong; for the Sheriff is only to remove the force, and is to suffer the Incumbent to enjoy his possession. Br. 54. 55.

And if the Sheriff will remove, or goeth about to remove the Incumbent who is in possession, the Incumbent shall have a writ directed to the Sheriff, commanding him that he shall not remove him, &c. and if he hath removed him, that then he without delay shall make him amends; and if the Sheriff shall not do this, the party may have an Alias, and Pluries, and an Attachment against the Sheriff.

utlary. *Retorne de Vtlary.* Vide *Retorne de brief de Exigent.*

CAP. 79.

wast.

Retorne de summons in vasto.

Pleg. de prosequend. { *Jo. D.* / *R. Ro.* }

Summon. infranom. *J. S.* { *J. P.* / *W. F.* }

ET ulterius ego A. B. Armig. Vic. comit. infrascript. Justic. Domini Regis infrascript. certifico, quod post sum. prædict', sc. decimo die A. anno infrascript. existent. die dominico immediate post Divinum Servic. In Ecclesia Parochiali de B. infraspec', nulla prædicat. adtunc ibidem existen', apud maxime usuale ostium Ecclesiæ Parochial' illius, infra quam quidem Parochiam tent' infrascript' jacent & existunt, proclam' feci sum' præd. secundum formam Statuti in hujusmodi casu ædit. & provisi.

Proclam.

A. B. Ar' Vic.

Note, That first the summons must be made upon the land wasted. Fitz. Disceit 59. And after the Sheriff must proclaim the summons at the Church door of the Parish where the house or land lieth, and then he must make his return of all, as above.

The Sheriff may return the Def. Nichil, &c. in a Writ of wast: *Icy le plt. avera tiel judgment come si le brief ust estre retorne servie.* 11 H. 6. Br. Retorn. 101.

In wast the Sheriff returned the Names of some of the parties, in false Latin, as Johes, where it should be Johem, but the Return was allowed for good. Fitz. Retorn. 42.

In wast at the Distring. the Sheriff returned that the Def. was distreined, and returned for mainpernors two, J. S. & J. C. and for that the Def. appeared not, a Writ went out to enquire of the wast, which was found, and the Plt. recovered. And the Def. brought his Writ of Deceit against the Sheriff, for returning that he was distreined, whereas he was not, &c. Fitz. Disceit 30.

Wast vers 2 de tenements que ils ils tiendra pur vie del anc. le plt. & per lour default brief issit d' enquire del wast, & le Vic. retorn. le enquest que dit que ils ne tiendre les tenements pur vie del anc. &c. Et le Vic. serra amerce, pur ceo que il aver prise tiel verdit sans garrant. Fitz. verdit 37.

In

In wast vers tenant pur ans le plt. recovera les biens wast & damages, Et le Vic. retorn. que nul vient a resceiver le seisin; Et que le def. n'ad biens d'ont il poiet levy les damages. Icy la Vic. poiet levier le terme del plt. in execution pur ses damages. Fitz. Executor. 248.

Retorn' de breve ad inquirend. de Vasto.

Virtute brevis Domini Regis mihi directi Ego *A.B.* Armig. Vic. com. præd. (tali die & anno) in propria persona mea Accessi, ad locum vastatum (or ad Tenementa vastata) in dicto brevi nominat', & apud S. (sc. the Town wherein the Tenement or place wasted lieth) feci Inquisitionem, &c. prout istud breve in se exigit & requirit.

Residuum executionis istius brevis patet in quadam Inquisitione huic brevi annex'.

INquisitio, &c. qui dicunt super Sacramentum suum prædictum quod *H. A.* & *J.* uxor ejus in dicto brevi nominat', fecer' vastum, venditionem, & destructionem in omnibus in eodem brevi spec', viz. permittend. unam aulam precii 40 s. duas cameras precii 3 l. & unum stabulum precii 20 s. esse discooperta pro defect. reparation. earundem domorum & per tempestates pluviales super ill' descendent' devener' putrid' & corrupt', &c. contra formam provisionis in eodem brevi content'; Et ulteri' Jur' præd. super Sacramentum suum prædict. dicunt quod prædict. *A.* & *J.* aliud neque plus vastum, venditionem, seu destructionem fecer' in domibus prædictis. In cujus rei testimonium, &c. ut supra.

A. B. Ar' Vic.

Executio istius brevis patet in quadam Inquisitione huic brevi annex'.

* Inquisitio indentata capta apud G. in Comitatu C. (tali die & anno) coram *W. L.* Vic. com. præd. virtute cujusdam brevis Domini Regis eidem Vic. inde direct. & huic Inquisit. consut' per Sacrament' *A.B.* &c. ad numerum 12 Jurator', qui dicunt super Sacrament' suum, quod *R.M.* in dicto brevi nominat', fecit vastum & destructionem in bosco in quo in brevi præd. fit mentio, & in bosco præd. succidit 20 quercos precii cujuslibet 20 d. part' inde vendend', & partim inde asportand, ad exhæreditationem *W. F.* infrascript. & contra form. provisionis in eodem brevi specificat', Et dicunt super Sacramentum suum quod præd. *R.* nullum majus vastum in bosco præd. fecit, prout eis aliquo modo constare poteit; in cujus rei, &c. Vide librum Intrac. fol. 695. c. d. *Aliter.*

Virtute istius brevis mihi directi, accessi ad locum vastatum in brevi isto content', prout interius mihi præcipitur, Et residuum execut' istius brevis patet in quadam Inquisitione huic brevi annex'.

Inquisitio indentata capta apud F. in comitatu C. tali die & anno, coram *A. B.* Vic. com. prædict', virtute cujusdam brevis Domini Regis ei direct', & huic Inquisitioni annex' per Sacramentum *A. B.* &c. (ad numerum 12) qui dicunt super Sacrament' suum, quod *J. R.* in brevi prædict. nominat' fecit vastum, vendition', & destructionem, in tenement', terris, & boscis, in brevi præd. spec', viz. in permittend' aulam, &c. in brevi præd. spec. discoopert', per quod grossum maremium earundem domor. per tempest. pluviales super illas descendentes, putrid' devenit, &c.

In an action of Wast against Two, a Writ went to the Sheriff to enquire of the wast, and he returned that the one of them made the

Wast, and not the other, this seems to be a good Return. Vide 14 E. 3. Fitz. Retorn. 111.

In a Writ to enquire of wast committed in A. B. and C. the Sheriff must return Quod Accessit ad Tenementa infrascript': And the Inquisition taken at one of the Towns will serve for all. 34 H. 6. 49.

If the Sheriff shall return Quod Accessit ad Villam, it is not good, but Quod Accessit ad locum, &c. 11 H. 4. 6.

Wast committed in a place called Reddel, The Sheriff returned Quod cepit Inquisitionem apud Reddel, it is not good, but it must be, Ad locum vastatum. 40 E. 3. 20.

In a Writ to enquire of wast assigned in S. it is no good return for the Sheriff to say, quod accessit ad S. but he must say, quod accessit ad locum vastatum, or tenementa vastata, & apud S. fecimus Inquisitionem, &c. Fitz. Wast 51. 27 H. 8. 13. Br. 2.

In a Writ of wast, the Sheriff returned, quod cepit Inquisitionem die Sabbati proxim' apud R. And for that he did not shew what Saturday (it was in certain,) And also for that he said not, Quod ivit ad locum vastatum, prout breve exigit, therefore the Sheriff was amerced, and a new Writ awarded, &c. Fitz. Wast 64. 40 E. 3. 20. Br. 17.

And note, that in these Cases the personal appearance of the Sheriff is requisite. Co. 4. 65.

Yea, the Sheriff (in a Writ to enquire of wast) ought to go with the Jury to every Town and to every place wasted, lying in several Towns, and there ought to view the places wasted, and then to make Inquisition in any one of the Towns of all the wast done in all the Towns, and also ought to find the wast in certain, sc. succidendo, so many Oaks, & hujusmodi ad valenc. &c. Et permittendo unam aulam & unam cameram, &c. & sic de singulis, and also must find the value. See Br. Wast. 17. & Fitz. Wast 51. 34 H. 6. 44. Br. 16.

And yet where the wast is assigned in two or more Towns, the Sheriff may cause the Jury to go and see the wast in each Town, and may make his inquisition in one of the Towns only, or in any other Town twenty leagues from the place wasted, as it seemeth by the opinions of Thirne and Hanke, quære tamen. 12 H. 4. Fit. Wast 62. Br. Wast 68. Br. Redisl. 5. Co. 8. 152.

For by other opinions, the Sheriff in proper person, and at the place wasted, must enquire thereof; And if the Sheriff shall enquire of the wast in any other place (where it should not be) and shall there make this enquiry, although it be in his own person, yet it is erroneous and void. Vide 16 E. 3. Fitz. Retorn. 82. where the Sheriff returned, quod accessit ad loca, & bosca vastata, & cepit inquisitionem, but for that it appeared by the Inquisition that it was taken at H. which was none of the places, nor Town, &c. therefore although that the Sheriff came to the places, and that the Jury went and saw the wast, yet for that the Inquisition was not taken there, the Sheriff was amerced, and a new Inquisition taken, &c.

The Sheriff in this Writ (to enquire of wast, which was assigned in two or three Towns) returneth, quod virtute brevis prædict. in villa infracontent. cepit Inquisition', or he returneth Inquisitio capta apud A. (being one of the Towns) and it appeareth not whether he (or the Jury) came to all the Towns, and therefore such returns are not good. Br. Wast. 17.

For in such cases the Sheriff ought to make his return, Quod virtute brevis, &c. Accessit ad loca or tenementa vastata, scilicet, to all the Towns (in which the wast was assigned) and at A. (being one of the Towns) fecit inquisitionem, &c. 34 H. 6. Br. Wast 17. Fit. Wast 51.

Or the Sheriff may return, quod accessit ad ambas villas, &c. and that he caused the Jury to go and see the places wasted, but he may return the Inquisition to be taken at one place only. Br. Retorn. 39. And note, that if any of the Jurors have made the view, that is sufficient. Old N. Br. 173.

Note, where the Sheriff shall do his Office well in one Town, and not in the other Town (in this Writ) a new Writ must be awarded, and all shall be enquired of de novo, for all the Inquisition must be made all by one and the same Enquest, and all at one time, by the opinion of Thirne. 12 H. 4. fol. 3. Br. Retorn 39. & Wast 68.

Note, that when the Sheriff hath made such his Enquiry of the wast, he must return the Inquisition before the Justices of the Common Pleas, and the single value of the wast; *Et donques les Justices taxer cel wast accordant al Statute de Glocester.*

Upon a Writ to Enquire of wast, the Sheriff returned that the Jurors were charged before him, and after departed in despite of the Court, without giving up any Verdict, This return was holden good; and an Attachment was awarded out against the Jurors, &c. Fitz. Attach. 6. Quære if the Sheriff might not have assessed a Fine upon the Jurors for such their departure. Vide hic cap. 64.

Upon this Writ to enquire of wast, the Jury may well find that no wast is done, (if the truth of the matter be so, for otherwise they should be perjured;) Otherwise it is, if the wast be confessed, there the Jury cannot find that no wast is done, Neither may the Sheriff make such a Return, per Brown, & Portman Justic. Pasch. 7 E. 6.

It seemeth by Mr. Fitzh. that the Sheriff in this Writ to enquire of wast, may enquire of wast by the oath of six or eight persons, and is not bound to take twelve persons, for that this Writ is awarded by office of the Court, to enquire, &c. Fitz. 107. c. But the contrary was holden Anno 7 E. 6. sc. That in such case, the Sheriff ought to make his Enquiry by 12 at the least; by Brown and Portman Justic.

Sur tiel Inquisit. le def. poiet doner evidence; Et les Jurors poient trover pur le def. que nul wast est, Co. l. 335.

Sur tiels [illegible]sitions prise devant le Vic. le def. poiet vener, & aver son challenge (devant le Vic.) al Array; Et ceo coment que le Inquisition soit prise per default. Auxi le def. poiet aver Atteint, coment que il nest que Enquest de Office. 2 H. 4. 3. Fitz. Atteint 13 Br. Chall. 27. *que le party poiet challenge* pro affinitate; N. Br. 113. *Auxi pur challenge al testes quært, Eo que le verdit est d[illegible] per le Jury, & nemy per les testes.* 23. Ass. Br. Chall. 115.

Nota, *que al Common Ley, la fuit un Probibition de Wast, envers tenant per le Curtesie & in Dower, & envers le Gardein in Chivalry. Et le Stat. de* Mag. Carta cap. 4. *confirme le Common Ley envers le Gardein. Apres le Stat. de* Marleb. cap. 23. *done auxi un Probibition envers le tenant a terme des Ans, [illegible] font wast (come envers le Gardein, ou tenant in Dower,) Mes in cel Probibition home ne recovera forsque single damag. al Common Ley.*

Apres le Stat. de Glocest. *(fait* 6 E. 1. cap. 5.*) enlarge cest Probibiton, lou il ne fuit devant forsque envers tenant per le Courtesie & in Dower, le Gardian, & tenant pur Ans, Ore ceo Stat. voet que brief de Wast serra poret envers tenant per le Courtesie, & tenant a terme de vie, tenant pur ans, & tenant in Dower: Et ouster lou il recover forsque single damages devant, ceo Stat. voet que il recover treble damages & auxi le liew wast. Mes coment cel Stat. de* Gloc. *ad enlarge cel Probibition, & done plus grievous punishment que devant, uncore in cel Probibition un ne serra punie forsque del wast fait apres le Probibition al eux direct, mes pur le wast fait devant le Probibition ne gist, &c.*

Et pur ceo le Stat. de Westm. 2. cap. 14. *fuit fait*, *Et per cest Stat.* Non fiat de cætero breve de Prohibition, sed breve de Summonitione, ita quod ille de quo queritur, respondeat de vasto facto quocunque tempore: *Issint pur cest Stat. probibition est ore ouste, & in lieu de cel un Summons est done, in quel brief le def. respond. auxi pur le wast fait devant le brief purchase come pur le wast fait apres, ut dicitur, mes* vide Foliambs Case. Co. 5. 115. hic cap. 58.

In brief d' enquire de wast, le Vic. Retorn. mandavi ballivo libertatis, &c. qui nullum dedit responsum, and was amerced, for that he should have entred the Franchise, he being herein a Judge by the Writ. Fitz. Ret. 53.

In brief d' enquire de wast le Vic. Retorn. Mandavi ballivo libertat: he was therefore amerced, and the Sheriff was commanded to execute it himself. Fitz. Retorn. 92.

And so now by the Statute 13 E. 1. cap. 14. in an action of Wast, first a Writ of Summons shall be awarded, and if the party (complained of, or against whom the Writ is brought) come not in and appear upon the Summons, he shall be attached, and after the attachment he shall be distreined, And if he come not in after the distress, then upon his default, a Writ shall go out to the Sheriff of the County where the Wast is supposed to be made whereby the Sheriff shall be commanded, that in his proper person, he taking with him 12 lawful men, &c. shall go to the place wasted (or where the Wast is done) and shall enquire of the Wast done, and shall return the Inquisition before the Justices (and the single value of the Wast, ut supra) and after the Inquisition returned, Judgment shall be given, &c. West. 2. c. 14. See Fitz. Wast. 45. 51, 62.

Note, that by this Statute the Sheriff is made both a Judge and Officer, quod accedat ad locum vastatum, &c. And therefore in a Writ to enquire of Wast, directed to the Sheriff of Land, &c. within a Franchise, the Sheriff ought himself to enter into the Franchise, and to execute this Writ himself, and if therein he shall return Mandavi ballivo, &c. he shall be amerced. Br. Retorn 38. & Fitz. Retorn. 53. 11 H. 4. Br. Proces 37. & Officer 34.

And if he shall not enter the Franchise and execute and serve this Writ himself, but by the Bayliff of the Franchise, it is erronious; And yet if the Sheriff shall return, quod accessit ad terram, the other cannot assign this for error, quod non accessit ad terram juxta returnum suum, for that he cannot contradict the Record. 7 H. 7. 4. Br. Officer 42.

Upon a Nihil dicit, in wast a writ went out commanding the Sheriff, quod in propria persona sua accedat ad terram vastat' to enquire of the damages, and it was holden good (and not to enquire of the wast, for that was confessed.) And here it is not necessary that the Sheriff should go thither in person, according to the Statute of West. 2. for that is only in vasto inquirendo, where the defendant maketh default at the distress. Dyer 204.

Nota auxi que brief de Estrepement gist in action de wast, & que le Vic. poet faire resistance in ceo breve, vide hic antea, cap. 58.

CAP. 80.

Retorna de Withernam.

Withernam. Virtute istius brevis, Cepi duas Ollas æreas, duas patellas æreas, &c. de bonis & catallis *J. H.* in isto brevi nominat. in Withernam, & ea *W. B.* infranominat' deliberari feci, habend' eidem *W. B.* quousque præd. *J. B.* catal præd. *W. B.* deliberar' voluer', prout breve istud in se exigit & requirit: Et ulterius vobis certifico, quod præd. *J. H.* in isto brevi nominat' null' habet alia bona neque catalla quæ in Withernam capi possint, ut per quæ attach. potest juxta tenorem hujus brevis.

Virtute

Virtute &c. cepi in Withernam apud D. in Com. infrascript. 2. vaccas, &c. de averiis infranominat' *J. D.* Et duas vaccas de averiis *R. T.* infranominat' ad valenc', &c. Quæ quidem averia præd. abinde fugere, & duci feci in quendam locum apud S. in Com. prædict. salvo & secur' ibidem custodiend. secund. exigent. illius brevis, ubi averia prædict. incumbent, Et *J. D.* & *R. T.* nulla habent plur', sive alia averia ad præsens, in balliva mea, quo ullo modo in Withernam capere possum, prout interius mihi præcipitur.

Virtute illius brevis cepi duas vaccas, & duas boviculas, de averiis infranom. *R. D.* & duas vaccas, & duas boviculas, de averiis *T. L.* quos deliberari feci *J. C.* infranom', salvo & secure custodiend', quousque alia averia infra specificat' ipsius *J. C.* prius capt', & ad loca mihi ignota transmissa, deliberare possum, prout interius mihi præcipitur. *Aliter.*

Infrascript. *J. H.* nulla habet averia in balliva mea quæ in Withernam capere possum, secundum exigentiam hujus brevis. *Aliter.*

Infranom. *J. H.* Nulla habet bona, Catalla, nec averia in balliva mea, quæ in Withernam Capere possum secundum exigenc. hujus brevis: (Nec aliud habet in balliva mea per quod potest Attachiari) Nec est inventus in eadem. *Aliter.*

Nulla sunt bona neque Catalla in balliva mea infranom. *J. H.* quæ in Withernam capere possum. Et ideo præfatus *J. H.* manucaptus est per *J. D.* & *R. K.* *Aliter.*

Mes quære de ceux deux darein Retornes, & semblables, car si le Vic. ou Baylisf, fait retorne, que le party Nulla habet bona, &c. *si tiel Retorne soit fait in Bank le Roy, ou Common Bank, le Plt. avera un* Capias *vers le Def. & issint Proces de utlary. Sed si le* Withernam *soit agard in le County Court sur tiel retorne fait per le Baily le Plt. avera* Alias & Pluries, & sic infinite; *mes nul auter remedy.* Fitz. 74. c. d. Vide Dyer 188, 189. *tiel Retorne.*

In a Replevin the Sheriff returned, Averia Elongata, whereupon there went out a Withernam, and the Sheriff returned, Quod non habet bona seu catalla infra, &c. Nec est inventus in eadem, And thereupon a Capias went out, and the Sheriff returned Cepi corpus, & quod languidus est in prisona, and thereupon went out a duces tecum, and the Sheriff brought the party into the Court, &c. Br. 100. *Withernam.*

Upon this Writ the Sheriff returned that he had taken the beasts of the Def. in Withernam, and delivered them to the Plt. and that he had Attached the Def. &c. Fitz. Gage deliverance 1.

Upon the Pluries Repleg' the Sheriff returned Catalla Elongata, &c. and thereupon the Plt. had a Withernam, to take the Goods and Cattel of the Def. ad valenciam, &c. with this clause, sc. Et si Querens fecerit te securum, tam de Clamore suo prosequendo, quam de averiis returnand' si, &c. *Tunc pone le def. &c.* Ad respond. tam Domino Regi de contemptu, quam præfato Querent. de dampnis & injuriis, &c. And according to the same Writ the Sheriff returned, Quod querens invenit Plegios de prosequendo, & de Retorno habendo si, &c. Et quia non potuit repleg. Catalla primo Capta, præfato querenti, juxta exigenc. brevis, Ideo cepit Sex boves, &c. de bonis & Catallis def. propriis, ad valenc &c. Et eos præfato querenti deliberavit in Withernam, detinend' sibi quousque, &c. and he further returned, quod def. Nichil habuit per quod Attachiari, &c. Dyer 188.

In Withernam, the Sheriff returned that he did not deliver the Cattel to the Plt. for that he was not in the Country. Thel. 228. quære.

Also in this Writ the Sheriff may return Tarde. Fitz. Jour. 34.

By Bracton and Britton, the Sheriff upon a Withernam may take Cattel or other Goods to the double value. See hic.

Et per ascun auter opinions, le Vic. ou Officer poet prendre in Withernam 40 *ou* Centum averia *ou plusors, Coment que le Pleint fuit sue forsque pur ou de un* tantum, Et nulla sequatur pœna. N. Br. 45.

Ou le Vic. poet prend. les Beasts del def. in Withernam *per agarde de gents de son County.* Regist. 83.

Also if a man sueth a Replevin of [illegible], Pans, or the like, yet upon a Withernam the Officer may take Oxen, Horse, or other Cattel or Goods. Viel N. Br. 45.

If a Plea of Withernam be in the County (by pleint before the Sheriff, without the King's Writ) and the Sheriff commandeth or sendeth to the Bayliff of a Franchise, to make deliverance or execution of the Writ, and the Bayliff of the Franchise doth nothing therein, Then the Sheriff ex officio suo, (without any Writ) may enter into the Franchise or Liberty, and make deliverance of the Cattel, and this the Sheriff may do by force of the Statutes made. 52 Hen. 3. cap. 21. & Westm. 1. cap. 17. Fitz. Wither. 2. & 10. Register 81. b. Fitz. 68. f.

See plus hic titulo Repleg. cap. 73. & 114.

Nota que en Replevin al plur. le Vic. retorne averia Elongata, *& le def. appear, & non obstant* Withernam *fuit agard, & pur ceo que fuit erroniousment,* Supersedeas *fuit agard al Vic. de surceasser, & que sil aver prist les beasts le def. que il eux restore, & le Vic. retorne que devant le* Supersed. *a luy deliver, il aver deliver les beasts de Def. al Plt. & que le Plt. eux esloigne, issint que il ne poet eux restore al def. &c.* 7 E. 4. 15. N. Br. 45.

CAP. 81.

Return of Commissions, Writs, and Process out of the Chancery.

Adjournment. Virtute, &c. omnia brevia mihi deliberat. seu deliberand', coram Justic. infrascript', apud Westm. in Octab. Sancti *Hill'* returnabil' sive return', habeo coram Justic. infrascript', apud Westm. die, &c. una cum omnibus executionibus eorundem. Et ulterius ad com. meum tent. apud Canteb. (tali die & anno) publice proclam. feci, quod partes in eisdem brevibus nominat', dies suos coram Justic. apud Westm', ad præfat. terminum conservarent, prout istud breve, &c.

Cerciorari.

Certiorari. Virtute, &c. Omnia & singula indictamenta R. B. infranominat', coram Domino Rege ubicunque fuerit in Anglia, ad diem infracontent. mitto in quadam scedula huic brevi consut'.

Virtute, &c. Indictamentum illud unde in dicto breve fit mentio, una cum omnibus idem Indictamentum tangentibus, in Cancellar' dicti Domini Regis mitto, &c. Aliter.

Certior' de Certifier Statut.

Certior' de Certifier Statut. *Que il ad auterfoits certifie ceo in le Chancery devant cest temps, come appiert* Fitz. 144. c. *per le Inrolment fait devant le Mayor, &c. cest bon Retorne.*

Certiorari

Certiorare super Protection'.

Virtute istius brevis Domini Regis infrasc' in Cancellar' sua, sub sigillo meo distincte & aperte certifico, quod *Will. T.* infranom. sub salva custod', & tuicione villæ castri Marchiar. Dom. Regis Callic', in obsequio ejusdem Domini Regis in S. prædict. consanguinii sui *W. D.* locum tenent' sui generali villæ Castri ac Marchiarum prædict' juxta formam Domini Regis literarum patent', per quas idem Dominus Rex præfat. *W. T.* in protectionem & defensionem suam nuper suscepit, non moraturum, sed moram trahit in Civitate *London* propriis negotiis suis intend', &c. *Certiorare super Protection'.*

Retorn' de Commission de Rebellion.

Domino Regi certifico quod tempore receptionis istius Commissionis, mihi & al' direct', infranominat' W. W. capt. & arrestat. fuit per W. S. Mil' Vic. com. C. virtute diversorum brevium eidem Vic. direct. & Gaolæ Domini Regis castri sui C. per eundem Vic. commissus fuit, in qua quidem Gaola ego præfat. J. W. præfat. W. W. virtute istius commissionis attachiari feci, prout interius mihi præcipitur, sed corpus ejus ad diem & locum infracontent. habere non possum, quia idem W. in eadem Gaola sub salva custod' dicti Vic. ob diversis aliis causis ibid. detinetur. *Commissio de de Rebell.*

A. B. Commission'.

Virtute, &c. Domini Regis in Cancellariam suam certifico, quod A. B. infranominat' coram nobis Sacrament. præstitit corporale, quod literæ patent. (unde infra fit mentio) ad manus infranominat. C. D. testatoris sui devenerunt; Sed per Sacrament. suum dicit quod nihil de articulis & aliis circumstant. in eisdem literis patent. specificat. coram se invent. fuit. *Dedimus potest.*

Responsum *H. L.* & *J. D.* Commiss.

Virtute istius Commissionis nobis directæ, cepimus responsum T. D. infranominat. super Sacrament. Dei Evangelium, quod omnia in eadem responsione content. sunt vera, Quæ quidem responsio sic capta, est huic commissioni annex' una cum billa nobis similiter in eadem direct', Et omnia alia quæ in ea commissione content', sive ad eadem pertinent, fieri fecimus secundum effectum & tenorem ejusdem, prout interius nobis præcipitur. *Return' de commission.*

The Return of a Dedimus potestatem *to take the Oath of a Sheriff.*

Virtute istius brevis nobis directi (tali die & ann', &c. infrascript.) recepimus Sacram. infranominat. A. B. Vic. Com. C. de officio illo bene & fideliter faciend. juxta formam cujusdam scedulæ præsentibus annex. prout interius nobis præcipitur: Ac prout breve istud in se exigit & requirit. See plus hic fol.

* Tam de officio isto bene & fideliter faciend' quam Sacram. specificat. in Act. Parliament anno Regni Dom. *Eliz.* nuper Reginæ *Angl.* primo fact. secundum tenorem hujus brevis, & scedulæ huic brevi annex. & in omnibus prout in præd. brevi præcipit'. *Alias.*

W. S. & *B. T.* Commiss.

De Eligend. Coronator. Milites Parliamenti. Burgenses Parliam'. Viridar' Forestæ. } Vide hic antea.

Ne Exeat Regnum. Ante adventum istius brevis, & ante aliquam executionem ejusdem A. B. C. D. E. F. &c. venerunt coram me J. D. Vicecomite S. & manuceperunt coram me præfat. Vicecom. pro L. M. videlicet quilibet manucaptorum prædict', sub pœna decem librarum, quod idem L. citra crastinum animarum proxim' futur', versus partes transmarinas, ad aliqua dicti Regis aut aliquibus de populis dicti Domini Regis præjudicial' sive dampnosa ibidem prosequend', seu attemptand. se non divertet, Nec quicquam ibidem prosequat', quod in dicti Domini Regis, seu populi sui præjudicium vel dampnum, aut Stat. Regni nostri Angliæ eversionem cedere valeat, nec aliquem vel aliquos illuc mitter. ex hac causa: Quam quidem summam decem librarum iidem manucaptores concesserunt, & quilibet eorum per se concessit de terris & catallis suis ad opus dicti Domini Regis levar', si idem L. aliquid contra formam manucap. præd. fecerit, seu fieri fecerit, vel attemptaver. quoquo modo, Et hæc est tenor securitatis unde interius fit mentio, Quam dicto Domino Regi in Cancell. &c. ad diem, &c. mitto.

Retor. super breve de Ordine Milit. recipiend': Vide hic antea.

Præmunire. Retorn. de breve de Præmunire: Vide hic antea.

Retorn' de Proclamac' extra Cancellar'.

Proclamac'. Virtute istius brevis mihi directi publice proclamar. feci infra ballivam meam quod infranominat. H. B. sub pœna legianciæ suæ coram Domino Rege in Cancellar. sua infrascript. ad diem infracontent. compareat prout interius mihi præcipitur: Nec non dicto Domino Regi certifico quod infranom. H. B. non est inventus in balliva mea.

Quid *le Vic. fera sur ceo.* Vide plus 261.

A. B Ar' Vic.

Retorn' brevis de Attachment cum Proclam. in Cancellar.

Virtute istius brevis mihi directi Domino Regi certifico, quod 5. die *Aug.* Anno Regni Domini Regis infrascript. 3. apud *Cantabr.* in Com. *Cantabr.* infraspec. Et 9. die *Aug.* Anno supradicto apud *Lynton* in Com. præd. Necnon 1. die *Septemb.* Anno suprad' apud *Newmerkett* in Com præd. Proclamari feci Omnia & singula in isto breve content. secundum formam & effectum ejusdem brevis, prout interius mihi præcipitur. Et ulterius dicto Domino Regi certifico, quod infranom. J. S. non est inventus in balliva mea.

Recog'. *Retorn. de Recog. extra Cancellar'.*

Executio istius brevis patet in quadam Inquisitione huic brevi annex'.

Inqui-

Inquisit. indentat. &c. (ut ante fol.) Qui dicunt super Sacrament. suum, quod E. M. in brevi præd. nominat. die captionis hujus Inquisit. fuit possessionat. de diversis bonis & catallis subsequen', viz. de frument. vocat. **Rye**, ad valenc. 10 s. de hordio ad valenc', &c. & de quibusdam utensilis vocat. **houshold-stuff** ad valenc &c. Quæ quidem bona & catalla ego præfat. Vic. liberari feci præfat. R. per precium præd', prout per breve præd. mihi præcipitur; Et ulterius Jur. præd. super Sacram. suum præd. dicunt, quod præd E. die recogn', deb. in eodem brevi specific', seu unquam postea nulla alia sive plur. habuit bona aut catall. terr', neque tenementa, in Com. præd', quæ R. W. in eodem brevi nominat. liber. fac. possum. In cujus rei testimonium, &c. ut antea.

A. B. Armig. Vic'.

Retorn' securitatis pacis.

EGo J. B. unus Justic. Domini Regis in Com. C. de pace conservanda assign. mitto coram Domino Rege in Cancellariam suam, tenorem securitatis pacis, de qua in dicto brevi fit mentio, sub sigillo meo, prout illud breve in se exigit & requirit, qui quidem securitatis huic brevi est consuta. *Securit. pacis.*

Retorn' de supplicavit.

EGo J. D. miles Vic. Com. infrascript', Domino Regi in Cancellar. sua certifico, quod ante adventum istius brevis A. B. infranominat. capt. fuit in balliva mea, & in prisona Domini Regis ibidem sub custodia mea detent', virtute cujusdam alterius brevis huic brevi consut', pro qua quidem querel, præfatus A. B. ante adventum istius brevis traditus fuit in balliva quibusdam B. B. C. D. B. F. & H. P. qui manuceperunt & quilibet eorum manucepit per se pro præfat. A. B. sub pœna 10 l. quod ipse dampnum vel malum aliquod H. P. in dicto brevi de supplicavit spec. infra talem diem proxim. futurum non fac', nec fieri procurabit quovismodo, Quas quidem 10 l. præfat. manucaptor. concesserunt, & quilibet eorum per se concessit de terris & catallis suis & cujuslibet eorum, ad opus dicti Domini Regis levari, si dampnum vel malum aliquod eidem *H. P.* per præfat. *A. B.* aut per procurationem suam interim eveniet ullo modo, &c. Et hæc est secur. pacis quam præfat. *A. B.* coram me invenit, &c. *Supplicavit.*

Sub qua quidem balliva præfatus *A. B.* permissus fuit ire ad largum, extra prisonam prædictam, & postea ad custodiam meam non revenit, quapropter corpus præfat. *A. B.* coram Domino Rege ad diem & locum infracontentos habere non possum. *Aliter.*

Ego, &c. Domino Regi in Cancellaria sua certifico, quod *A. B.* infranominatus nullam mihi invenit securitatem pacis de qua interius fit mentio, sed in prisona Domini Regis sub custodia mea ad præsens residet. *Aliter.*

Supplicavit de pace *issuit hors de* Banco Regis, retorn. Octab. *Michaelis*, *Et le def.* medio tempore *trova Suerty in le Chancery*, *&* ad Supersedeas *al Vic. de Surceasse & sur le* breif de Supplicavit *le Vic. retorne le dit* Supersed'; Quære *si le* Supersed. *(ou ceo retorne) serra allow*; *Car* dicitur *que Bank le Roy est* altior Curia. Cromp. auther. *des Courts* 74. & 78. & vide hic Retorn. de Corpus cum Causa.

Si Supplicavit *soit direct al Vic. de arrester ascun de trover Suerty pur le Peace*, *Et le Vic. fait Precept a son Bayliff de causer le party de vener*

 devant

devant luy de trover Suerty, in ceo Case si le party ne voit obeyer tiel warrant ou precept, il ne serra commit al prison, mes que le Vic. doit retorne ceo matter, Et sur cel retorne la issuer un Capias, ut dicitur. Tamen *semble si le party ne voet obeyer, mes fait resistance, ou refuse de vener devant le Vic. de trover Suerty, que le Bayliff poet imprison luy.* Vide Countrey Justice, cap. 73.

Also if a Supplicavit of the Peace be directed to the Sheriff, and to all the Justices of Peace of that County, and be delivered to the Sheriff, he only ought to execute it; sc. He is to grant out his warrant to bring the party before him (alone) to find sureties for the Peace, and he is further to do therein in every behalf according as the Writ directeth him.

And by such Warrant (or Precept) the Sheriff (as it seemeth) may command his Bayliff, (or the Constable, or other indifferent person) to carry the party to prison, if he shall refuse to come before him to find sureties, &c. And yet the Writ to the Sheriff is to arrest and commit him, si coram vobis, vel te, recusaverit, &c. So that the Sheriff may (in such Case) grant or commit part of his authority to another, ut sup. But the Sheriff cannot give power to another to take this surety for the Peace; for that is a Judicial Power, which he cannot assign over, nor make any Deputy therein. 9 E. 4. Br. Depnty 20.

CAP. 82.

Retorne de Proces, extra Scaccarium.

Retorna de Capias, extra Scaccarium.

Cepi tam corpus, quam ter'. Virtute istius brevis mihi directi Baron. infrascript' certifico, quod cepi corpus infranominat. *J. R.* cujus corpus coram dictis Baronibus parat' habeo ad diem infracontent': Necnon vicesimo die J. anno, &c. infrascript' cepi in manus dicti Domini Regis, nomine districtionis, cert' terr' & tenementa infranominat' *J. R.* jacen. & existent. in B. Annui Valor. C s. prout istud breve in se exigit & requirit.

A. B. Ar' Vic'.

Cepi Manerium. Virtute istius brevis mihi directi, Baron. infrascri[illegible] certifico, quod vicesimo die Marcii, anno, &c. infrascript. cepi in ma[illegible] Domini Regis infraspec. Mancrium infrascript. cum pertinent', prout interius mihi præcipitur: Et si sit cum Inquisitione pro anni valore, tunc sic breve prædict. retorn. est: Aliter.

Residuum executionis istius brevis patet in quadam Inquisitione huic brevi annex.

A. B. Ar' Vic'.

Inquisit. Inquisitio Indentat. capta apud C. in Comitat. præd. secundo die Martii Cantabr. anno, &c. Coram *A. B.* Ar. vice' Com. præd. virtute brevis Domini Regis mihi directi & huic Inquisitioni annex' per Sacram' *A. B. C. D. &c.* (ad numerum 12 Jurat.) Qui dicunt super Sacrament. suum, Quod, &c. (as the matter is.)

Aliter Cepi Corpus. Virtute istius brevis mihi directi, cepi corpus infranominat' *J. S.* cujus corpus coram Baron. infrascript. parat. habeo, prout interius præcipitur mihi.

Virtute

Virtute istius brevis mihi directi Baron. infrascript. certifico; Quod secundo die M. anno Regni Domini Regis infrascript', &c. decimo nono; Ego A. B. Ar. Vic. com. C. infrascript. cepi, resumpsi, & in manus Domini Regis seisivi, Omnia Tenementa, shopas, gardina, & omnia alia pertin. virtute brevis præd. resumend. quæ patent in Inquisitione huic brevi consut'. *Cepi in manus Domini Regis.*

Retorn' de seisure in Scaccar', nomine districtionis.

VIrtute istius brevis mihi directi secundo die M. anno Regni Domini Regis infrascript. decimo nono, in manus Domini Regis seisivi Manerium de S. infrascript. cum pertin. in S. in com. infrascript', quod quidem Manerium est clari annui valoris in omnibus exit. ultr' repris. 20 l. de terr' P. B. in scedul. huic brevi annex' nominat'; Ac cepi etiam in manus ejusdem Domini Regis unum torment' vocat' a **Petronell** cum le flask & touchbox valor' 10 s. nomine districtionis, de bonis & catallis J. C. in scedul. prædict. nominat. prout istud breve in se exigit & requirit, &c.

A. B. Ar. Vic.

Virtute, &c. Cepi de terris & Tenementis infranom. W. R. ad valenc. lx s. quos habeo coram Baron. infrascript. ad diem & locum infracontent', prout interius mihi præcipitur, Et ulterius Baron. infrascript. certifico, quod prædict. W. nulla alia sive plura terras neque Tenementa, bona neque catalla in balliva mea habet, unde residuum debiti infrascript. fieri facere possum, prout istud breve in se exigit & requirit.

Baron. infrascript. certifico quod omnia terr' & tenementa quæ fuer' infranom. N. F. (aut aliorum antecessorum suorum) jacent in com. S. non in balliva mea. *Terra jacet in alio com'.*

A. B. Ar' Vic.

Infranominat. *J.* E. non est inventus in balliva mea, nec habet ulla bona seu catal' in balliva mea, sed virtute istius brevis mihi directi, Baron. infrascript. certifico, quod 15. die Junii anno 19. Domini Regis infrascript. cepi in manus dicti Domini Regis nomine districtionis, 7. Messuag. sive tenementa cum pertin. in M. quæ sunt clari annui valor' 1 s. Et unum capitale Mess. sive firmar. cum pertinent. in W. annui valor' quinque Marcarum. *Seisure nomine district.*

Aliter. Infranominat. *A. B.* non est inventus in ball' mea; Et ulterius Baron. infrascript. certifico, quod virtute istius brevis mihi direct', tali die & anno infrascript' cepi in manus dicti Domini Regis unum Messuag. sive tenementum cum pertinen. in B. in Com. C. infrascript. annual' valor' 10 l. ut de terris & tenementis infranominat. *A. B.* Necnon sex vaccas, unum Taurum, & unum spadonem precii in toto 8 l. de bonis & catallis ejusdem *A. B.* nomine districtionis, prout mihi præcipitur.

Quæ quidem omnia bona & catalla penes me remanent invendit. pro defectu emptorum. Et idem *A. B.* nulla alia sive plura bona seu cattalla, terr' seu tenementa habet infra ballivam meam, quæ in manus dicti Domini Regis ad præsens aliquo modo capere vel seisire possum.

Aliter. Baron. infrascript. certifico, quod virtute istius brevis mihi directi 2. die M. anno, &c. infrascript', cepi in manus Domini Regis Manerium de S. cum pertinen. infrascript. prout, &c.

Scedula. Residuum execut. istius brevis patet in quadam scedula (sive Inquisitione) huic brevi consuta.

Inqui-

Inquisitio. Inquisitio Indentat' capta apud C. in com. præd. 2. die Martii anno, &c. 19. coram me *J. H.* milit. Vic. com. præd', virtute brevis dicti Domini Regis mihi directi, quod est huic inquisitioni annex' per Sacram. *J. D. R. K. &c.* proborum & legalium hominum com. prædict', Qui dicunt super Sacram' suum quod Manerium de S. cum pertinen. est annui valor' 5 l. ultra omnia onera & repris. In cujus rei testimonium, &c.

In alio Comitat. Manerium de S. infraspec. jacet in com. E. & non in com. C. ideo tenentes inde distringere non possum prout interius mihi præcipitur. Aliter.

Infranominat. *E. S.* est Vic. com. B. & est comorans in dicto com. B. & non est inventus in balliva mea.

Il m. party. Baron. infrascript. certifico quod ego *H. W.* miles modo sum Vic. com. C. Ideo meipsum distringere non possum, prout interius mihi præcipitur, Br. Proces 9. & hic cap. 20.

Infranominata Domina *J. S.* Nichil habet in maneriis, terris, & tenementis infrascript. nisi cum *K. S.* milit' quem ipsa accepit in virum.

Retorn' de distring'.

Where the party is sufficient, see how the Return shall be. Hic cap. 56.

Aliter. Infranominat. R. A. Nihil habet in terris, tenementis & hæreditamentis infrascript', per quod ipsum distringere possum.

Aliter. Nullum tale Manerium, nec ulla terr. seu tenement. cognita per nomen de E. jacent in com. Cant. unde tenent. inde distringere possum, prout interius mihi præcipitur.

Aliter. Infranominat. J. K. & R. R. Nihil habent, Nec eorum alter aliquid habet in balliva mea; Et ulterius Baron. infrascript. certifico, quod nulli sunt Executor. vel Administrat. bonor' & catallorum quæ fuerunt infranominat. M. K. unde ipsos aut eorum aliquem distringere possum.

Aliter. Baron. infrascript. certifico, quod A. B. C. D. & cæteri personæ in quibusdam scedulis huic brevi annex' nominat', nulla habent bona seu catall' infra ballivam meam unde seperalia debita super eos onerat', seu aliquam inde parcell', fieri facere possum. Nec sunt invent. nec eorum aliquis est invent. in balliva mea; Nec sunt aliqui exec' test. sive ultimæ voluntat. prædict. sepéralium personarum neque administratores bonorum & catallorum quæ sua fuerunt, nec aliqui hæred' seu tenen' terr' prædict. separal' personar' sive eorum aliquor. infra ballivam meam quæ distringere possum, prout istud breve in se exigit & requirit.

Residuum executionis istius brevis patet in quibusdam Inquisitionibus huic brevi annex'.

A. B. Ar' Vic.

Nihil. Inquisitio Indent. &c. Qui dicunt super Sacram' suum, quod A. B. C. D. &c. in scedul. huic brevi annex' nominat' seperal' diebus & annis quibus primo debitor. devener' Domino Regi, seu unquam postea hucusq; null' habuer' bona seu catalla terr' sive tenem' infra ballivam meam quæ extendi aut appræc' possint ad eorum noticiam. Et quod mortui sunt, quibus die & anno sive diebus & annis, ac ubi penitus ignorant. In cujus rei testimonium, &c. ut antea.

A. B. Ar' Vic.

Baron. infrascript' certifico quod P. M. J. S. & T. W. in scedula huic brevi annex' nominat', nulla habent bona seu catalla, terr' sive tenem',

tenem', infra ballivam meam unde separalia debit' super ipsos & eorum cujuslibet imponit' fieri facere possum: sed virtute istius brevis mihi direct' fieri feci de bonis & catall' H. L. T. K. & J. B. in dict' scedula nominat' separal' summas super ipsos & eorum quilibet onerat', & denarios ill' coram Baron' infrascript' ad diem & locum infracontent' parat' habeo, prout interius mihi præcipitur. Et ulterius certifico quod J. B. E. A. & W. B. in dicta scedula nominat' dicunt se habere exonerationes pro separal' summis super ipsos & eorum quemlibet onerat', & pro eo accepi ab eis sufficien' securitat', & prefixi eis diem essendi hic ad Scaccarium Domini Regis infrascript' ad diem & locum infracontent', prout interius mihi præcipitur.

A. B. Ar' Vic'.

Retorn' brevis, de Quis est tenens.

Virtute istius brevis mihi directi Baron' infrascript' certifico, quod W. B. & M. uxor ejus sunt tenentes tertiæ partis Manerii infrascript' in tres partes dividendum & C. A. M. E. & J. B. filiæ C. D. defunct', sunt tenent' secundæ partis Manerii præd', in tres partes divídend', & tertia pars Manerii prædict' remanet in custodia Domini Regis, ratione minoris ætatis P. D. fil' & hæred' prædict' C. D. *Quis est tenens*

Manucapt' prænominat' W. B. & M. uxor' ejus { *Jo. Doo.* *Rich. Roo.*

A. B. Ar' Vic.

Infranominat. W. B. & uxor ejus sunt tenentes tertiæ partis Manerii infrascript. in tres partes divisas: Et C. A. M. E. & J. B. filiæ C. D. defuncti sunt tenentes secundæ partis Manerii infrascript. in tres partes divisas, & alia tertia pars Manerii infrascript', remanet in manibus Domini Regis ratione minor' ætatis T. B. filii & hæred' prædict. C. D. *Aliter.*

Manuc. prænominat. W. B. & M. uxor. ejus J. D. R. R.

Retorn. de Venire fac. extra Scaccarium.

Et ceo semble destre versus l'Officers del Corone, vel Scaccarii, & est in nature de Summons.

Infranominatus A. B. Nichil habet in balliva mea, per quod potest Attachiari, vel ubi eum Sum. possum. *Venire fac.*

Aliter, sc. lou est suffic.

Infranom' A. B. attachiat. est per pleg. viz. { *J. F.* *R. D.*

A. B. Ar' Vic.

Exitus eorum, dim. marci.

Et ulterius, si hæc verba recitantur in brevi (necnon ad ostendendum) tunc in quovis 20 s. *Si soit Comes aut Comitissa tunc sic.*

Infranominat. R. A. nichil habet in terr. tenem', & hereditament. infrascript. per quod ipsum distringere possum.

Nullum tale Manerium, nec ulla terr. seu tenement. cognit. per nomen de E. jacent. in comitat. C. unde tenent. inde distringere possum, prout interius mihi præcipitur. *Distring.*

Retorn.

Retorna de fieri facias ubi null' additio datur aliis def.

BAron. infrascript. certifico quod sunt diversæ personæ in Com. meo nomin. & cognominis de J. K. *viz.* J. K. de F. & J. K. de A. quæ non continentur in isto brevi, Ita quod de cujus præd. J. K. &c. bonis & catal' denar. infrascript. fieri facerem Nescio. Ideo ad execut. istius brevis procedere non potui.

A. B. Ar' Vic.

Retorna brevis summ' coram Justic. Forestæ. Vide hic cap. 47.

Foresta. VIrtute istius brevis mihi directi sum' feci Archiepiscop', Episcopos, Duces, Comit', Baron. & omnes alios liberos tenent. qui terr. & tenement. habent infra metas Forestæ Domini Regis infrascript', in com. meo, & quatuor homines, & præposit. de quolibet villat. infra metas ejusdem Forestæ, Ac etiam 12 probos & legales homines de quolibet burgo infra metas dict. Forestæ tenend', qui venire debuerunt & solebant, quod sint coram Justic. infrascript', ad diem & locum infracontent', prout interius mihi præcipitur. Publice etiam proclam. feci per totam ballivam meam tam in burgis quam in aliis vill. ac in feriis, mercatis, & aliis locis publicis quod omnes ill' qui per cartam Domini Regis nunc, aut antecess. vel progenitor. suorum, aut aliquo alio modo aliquas libertates seu Franchesias teneant, aut libertat. habere clam', & quo Warr'; quod sint coram dictis Justic. ad diem & locum prædict', proclam. etiam feci quod omnes attach. pro vert. aut venatione in Foresta præd. post ultimum placit. Forestæ prædict. tent. & eorum pleg. & manucapt. qui habuer. diem per manucaption. præd. essend. coram præfat. Justic. adstand. rect', & ad faciend. ea quæ secundum legem Forestæ facere debent. Cromp. Auth. des Courts 50.

Residuum execution. istius brevis patet in quibusdam pannell. huic brevi annex'.

A. B. Armig. Vic'.

Anthon. B. de C. generos. & sic 24 for the Grand Jury; and twelve for the Pety Jury. Le Pannel.

Retorn. de venditioni expon'.

Venditioni' exponas. VIrtute istius brevis mihi directi de die in diem venditioni exposui illa bona & catalla ad valentiam C s. residuum de 8 l. quæ nuper de bonis & catallis terris & tenementis T. F. infranominat. cepi, & inde vendidi ad valentiam 40 s. Quos quidem quadragint. solidos parat. habeo ad diem & locum infracontent. ad reddend. infranominat. C. D. prout interius præcipitur, tunc ibidem solvend'. Et residuum bonorum & catallorum præd. adhuc penes me remanent invendit. pro defectu emptorum sed venditioni apponam de die in diem, & quando vend. contiger. denar. inde provenient. coram Baron. infrascript. habebo secundum formam & effectum hujus brevis.

Virtute istius brevis mihi directi de die in diem venditioni exposui illa bona & catalla ad valenciam C s. residuum de 8 l. quæ nuper de bonis & catall', terris & tenementis T. F. infranominat. cepi, & inde vendidi ad valentiam 40 s. quos quidem 40 s. ad diem & locum infra- Aliter.

con-

content' parat' habeo ad reddend, infranominat. C. D. prout interius mihi præcipitur. Et residuum bonorum & catall' præd. adhuc penes me remanent invendit' pro defectu emptorum.

Aliter. Illa bona ad valentiam vigi[illegible] Marcarum infrascript', quæ virtute brevis Domini Regis nunc nuper mihi directi cepi de bonis & catallis terris & tenementis, quæ nuper fuerunt T. F. infranominat' venditioni exposui, & vendidi, & denarios illos coram Baron' infrascript', ad diem & locum infracontent' paratos habeo prout interius mihi præcipitur.

Aliter. Baron' infrascript' certifico quod ill' Centum Oves in hoc breve spec' venditioni exponere non potui, eo quod adhuc remanent in manus infranomin' R. N. nuper Vic. Com. C. & nunquam mihi præfat' nunc Vic. adhuc per præfat. nuper Vic. deliberat' fuer'. *In mains le ancvic'.*

Et Vic' retor' quod bona non fuerunt capta per ipsum nunc Vic': sed per quendam T. nuper Vic. Prædecessor', &c. Ideo bona illa venditioni exponere non potuit. Fitz. proces.—99. Br. Retor. 15.

Aliter. Virtute, &c. Baron' infrascript' certifico quod 10. die A. &c. cepi de bonis & catallis terr' & tenementis infranominat' W. ad valorem, &c. Et de bonis & catal', terris & tenementis J. D. &c. ad valorem, &c. Et illa vendition' exposui, ad quæ nondum inveni emptores, & ideo denarios, &c. *Nondum inveni Emptores.*

A. B. & C. D. infranominati mortui fuerunt diu ante emanationem hujus brevis, Nec aliqua habere bona seu catalla, terras seu tenementa in balliva mea quæ extendi & appreciar' possum, prout per breve istud interius mihi præcipitur. *Mortui sunt.*

Infranominat' A. B. & C. D. Mortui sunt: Et quoad residuum executionis nihil per me actum est propter temporis brevitatem. *Nihil fact' propter temp' brevit.*

Retorn' de Scire fac'.

Virtute, &c. Scire feci J. C. infranominat' quod sit coram Baron' infrascr' ad diem & locum infracontent' per J. S. & R. S. probos & legales homines de balliva mea, prout interius mihi præcipitur.

Aliter. J. C. & cæteri def. infranominat' Nihil habent in balliva mea per quod eis Scire facere possum.

Aliter. Nulli sunt executor' de E. infrascript', neque administr' bonorum & cattallorum quæ fuerunt ejusdem E. nec hæred' neque tenent' terrar' & tenement' quæ sua fuer', in balliva mea, quibus aliquo modo Scire facere possum. Plus hic Cap. 75.

Nota que le Summons del Eschequer est un Scire facias.

Retorn' brevis Collect' 15 & 10 intra Scaccarium.

Virtute istius brevis mihi directi, Scire feci infranom' A. B. ac etiam quæ ex parte Domini Regis fierint dedi in mandat' quod prædict. A. B. circa levationem & collectionem sextæ quintædecimæ & decimæ sex integrar' quintedecimar' & decimar' infrascript'. Ac obligac' secundum formam Stat. infrascript' prædict' A. B. ostendi feci ipsum ex parte Domini Regis sigilland' & ut factum suum ad usum ejusdem Domini Regis deliberand, sc. dedi in mandat', sed prædict. A. B. omnino eand' sigillare, vel circa collect. prædict. intendere recusavit, & adhuc recusat, in contemptu dicti Domini Regis, Ideo eandem obligationem ad diem & locum infracontent. habere non possum prout interius mihi præcipitur. Et ulterius certifico quod Scire feci infranominat. C. D. quod ipse circa levacionem & collectionem dict. sextæ quintedecimæ & decimæ prædict. sex integrarum quintarum decimarum infrascript. diligenter intendat, Et obligationem secundum formam Statuti infrascript' ab *Collect' 15.*

eodem C. D. recepi, & eandem in Scaccar' dicti Domini Regis ad diem infracontent' certifico, prout interius mihi præcipitur.

A. B. Ar. Vic.

Retorn' brevis de respect' homag' al Distringas in Scaccario.

Resp. homag. Manucaptores infranom. *A. B.* { *Jo. D.* *R. Ro.* }

Exitus 20s. or according to the value of the Land more or less.

A. B. Ar' Vic.

Quando aliquis ostend' Vic' tall' sua.

Ostendit tall'. Virtute istius brevis mihi directi Baron' infrascript' certifico, quod firmar' infranominat' post receptionem hujus brevis mihi ostend' tall' sua, de solutione firmæ suæ interius specific', ob quod præfixi eis diem essendi coram Baron' infrascript', ad faciend' & recipiend' super tallia prædict. juxta tenorem hujus brevis, Et ideo levatio sum' interius specific' supersed', prout interius mihi præcipitur.

A. B. Ar' Vic'.

Retorn' brevis ad proclam' Vic' ad reddend' compotum suum per Coronatores.

Proclam vic. ad Redd. compotum. Virtute istius brevis nobis directi Baron' infrascript. certificamus, quod in pleno com. C. infrascript. tent. apud castrum C. in comitatu C. præd. vicesimo die A. anno &c. infrascript', ac etiam in pleno comitatu prædict. apud C. præd. decimo octavo die Septembr. anno, &c. Necnon diversis vicibus postea in comitatu præd. articulatim proclamari fecimus omnia & singula articula quæ in isto brevi continent. & specificantur, prout per breve istud nobis interius præcipitur.

J. W. *W. R.* } Coron'.

Inquisitio. Inquisitio, &c. Qui dicunt super Sacrament. suum, quod quibus die Cantabr. & anno nuper comes H. obiit, & ubi penitus ignorant, quodque ipse nulla bona aut catalla in Com. præd quæ capi & in manus dicti Dom. Regis extend. possunt: Et ulter. dicunt quod præd. Comes *H.* die quo obiit fuit seisit. in Domin. suo ut de feodo, de & in Manerio de C. cum pertin. clari annui valor. in omnibus ext' ult' repris. 25 *l.* quod quidem maner. cum pertin. ante advent. istius brevis ego præf. Vic. virtute alter' brevis extra hanc cur' emanent' & ex parte rememor' dict. Domini Regis hujus Scaccarii affilat', seisir. feci in manus dicti Domini Reg. per extent. præd', In cujus rei testimon', &c.

Alias. Vicar. infrascript. cum pertin', in manus Dicti Domini Reg. existit, sede Episcop. Eliens. modo vacante.

Alias. Quod maner', terr', & tenementa nuper D. Dom. de la Warr', in manus dicti Dom. Regis existunt, eo quod *T. W.* miles modo Dominus de la Warr', filius &

& hæres præd. D. non prosecut' est liberation. suam extra cur. dicti Domini Reg. wardor. & liberac. In cujus testimon', &c.

Inquisitio,&c. Qui dicunt super Sacram' suum quod *W.F.* in scedul. brevi præd. annex' nominat' mortuus est, sed quibus die & anno aut ubi penitus ignorant, quodque *W. M.* etiam in eadem scedula nominat' est residens in London, & *J. S.* est comorans apud B. in com. C. & R. *A.* in vill' & com. H. extra com. C. & reliqui person' in eadem scedula nominat' ita vagrant & discurrunt in com. præd. quod capi & arrestar' non possunt. In cujus rei testimonium, &c. *Inquisitio*

Inquisitio, &c. Qui dicunt super Sacram' suum quod *H. S.* in scedul' huic brevi annex' spec' nulla alia sive plura habet maneria, terr', neque tenementa in com. præd. præter & ultra maneria terr', & tenementa in scedul' brevi præd. annex' spec. extend', aut quæ in manus Domini Regis seisiri possunt. In cujus rei testim', &c.

Inquisitio, &c. Qui dicunt super Sacrament' suum, quod *J. W.* in brevi præd. nominat. die caption. hujus inquisitionis fuit possessionat. de quadam dimissione pro termino viginti annorum unius Messuag', &c. in A. in com. præd. cum pertinen. annui valoris in omnibus exit. ultra repris. 4 l. quam quidem dimissionem ego præf. Vic. die captionis hujus inquisitionis cepi in manus dicti Domini Reg. In cujus testimon', &c.

CAP. 83.

Retorna brevis extra Cur' Wardorum & Liberationum.

POst receptionem istius brevis, & ante retorn. ejusdem seperales denar. summæ infrascript. solutæ fuerunt per seperales personas infranominat. receptori Domini Regis cur' sua wardorum & liberationum: Ideo ad executionem ejusdem brevis procedere non potui prout interius mihi præcipitur.

A. B. Ar. Vic.

CAP. 84.

Retorne del Vic. sur Precept del Justic. de Peace, direct al Vic. pour Enquirer de Riot, ou forcible Entrie, &c.

VIrtute istius Præcepti mihi directi, venire feci coram Justic. infrascriptis, ad diem & locum infracontent. 24 probos, sufficientes, & legales homines de Balliva mea, prout interius mihi præcipitur.

Residuum executionis istius præcepti patet in quadam scedula huic Warranto annexat.

A. B Ar' Vic.

Scedula. Cantab.

Nomina Jurator. ad inquirend. pro Domino Rege de quibusdam illicitis aggregationibus & Riotis, &c. apud Abb. magna commissis, Summon. ad essend coram Justic. Domini Regis apud Linton (in Com. præd. 23 die April. (Anno Domini 1623.) secundum exigent. cujusdam warranti huic schedulæ annexat.

And then underneath write down the names of the 24 thus :

Tho. B. de Linton.
R. B. de eadem.
J. P. de H.
Et sic de cæteris, ad numerum de 24.

Quilibet Jurator. præd. separatim per se attachiat. est per pleg. { *Johem Doo.* *Ricum Roo.*

Exitus eorum cujuslibet 20 s.

A. B. Ar' Vic'.

Retorns concerning the old Sheriff.

Cap. Utlag. ANte adventum istius brevis, J. C. miles nuper Vic. com. C. infranominat. T. D. cepit & in prisona Domini Regis penes se detinuit virtute cujusdam brevis Domini Regis dicto nuper Vic. direct', quem quidem T. D. dictus nuper Vic. una cum dicto brevi ei directo, mihi J. D. mil' nunc Vic. com. præd. in ejus exitu ab officio suo deliberavit, cujus quidem corpus, ac breve dicto nuper Vic. direct' Ego præfat. nunc Vic. coram Justic. infrascript. ad diem & locum infracontent. parat. habeo, ad faciend. & recipiend. quod dictum breve in se exigit & requirit.

Testific. rei nuper vic. Istud breve prout superius indorsat. simul cum Inquisic. huic brevi annex. *6.* die *Ma.* anno Regni Domini Regis, &c. liberat. fuit mihi A. B. Ar. Vic. Cantab. infrascr. per *Jo. C.* milit. nuper Vic. com. prædict. prædecessoris mei, in ejus exitu ab officio suo.

Ceo darein Retorn. doiet destre escri en Romaine *letters.*

REtorn. ad proclamand. Vic. ad redd. Compotum : See antea *Retorn. de procces hors del Escheqner*, cap. 82.

Retorn. de Captus *per darein Vic.* & minime deliberat. in exitu ab officio : See hic antea *Retor. de Habeas Corpus*, cap. 63.

Retorn. de exigent inter duos Vicecom. vide hic antea *Retorn. de Exigent*, cap. 59.

Retorne, que les biens (destre vend) remain in les mains del anc. Vic. hic fol. 117.

CAP. 85.

Return of Juries.

JUries are of two sorts, sc. for Enquiry, or for Trial.

Of the first sort are, Grand Juries returned to the (Assises) or general Goal-delivery ; or for the Quarter-Sessions of the Peace.

Of this sort also are, the Juries returned before Justices of Peace, to Enquire of Riots, and Forcible Entries, &c. And Jurors returned before Escheators, or before Commissioners of Sewers, or upon the Stat. of Bankrupts, Coroners, and Clerks of the Market, &c.

And so of Inquisitions taken before the Sheriff.

Jurors for Trial, are such as are returned when a matter is in trial between party and party.

The

The Sheriff (upon a Precept directed to him) is to summon (or warn by his Bayliffs) and to return (or to cause to be summoned and returned) the Grand Jury to the Assises; the form whereof see antea cap. 46. *For the Assizes.*

The Sheriff is likewise to summon (or warn) and to return the Justices for the Quarter-Sessions; the form whereof see also antea c 47. *For the Sessions.*

The Sheriff is likewise to Summon (or warn) and to return, Juries for Enquiry, before Justices of Peace, out of their Sessions) and before Commissioners, Escheators, Coroners, and Clerks of the Market, upon their several Precepts directed to the Sheriff for that purpose. See hic cap. 83. & 100.

42 E. 3. c. 11 6 H. 6. c. 2. Sheriffs ought to array their pannels for the special Assises six days (at least) before the Sessions of the Justices, upon pain of forty pound; so that the parties Plaintiffs, Tenants, or Defendants may have the view and copies of the pannels, if they shall demand the same. *For Trial.* *Copies of Pannels.*

Pannel here signifieth a little part of parchment wherein the Jurors Names be written and annexed to the Writ: And a Jury is said to be impannelled, when the Sheriff hath entred their Names into the Pannel or piece of Parchment. Co. L. 158. b.

Mes ceo nest que un pein al Vic. que serra levy per suit &c. Sed *nest ascun cause de Challenge le Array, &c.* Abr. d'Ass. 131, 132.

Nota, *Que ceo parol Array, est le disposing ou ordering dun Jury.*

And these copies of Pannels shall be indented by the Sheriff, and delivered to the Plaintiffs, Tenants, and Defendants (upon their demand) six days at least, before the Sessions, upon pain to forfeit to the King, forty pound for every default. 6 H. 6. cap. 2. *Et le party auxi recovera ses damages.* Abr. d'Ass. 132.

Ceo auxi semble forsque un peine al Vic. &c. Et que suffist de arrayer le Pannel d'Assize 2. jours avant les Assizes; Et pur deliver Coppies del Pannels 4. jours avant les Assizes, Eo que les dit Stat. sont in l'affirmative, &c. 43. Ass. pl. 22. Vide Br. Pannel 10. *que chescun array in Assize covient estre fait 4. jours devant.*

Ibid. Also the Bayliffs of Franchises and Liberties ought to make their returns to the Sheriff (of the names of such persons as are to be so impannelled) eight days (at least) before such special Sessions or Assizes, upon pain of forty pound to be forfeited to the King for every default.

Mr. Fortescue speaking hereof saith thus. So soon as Suters in the Kings Courts are at issue upon the matter of the fact, the Justices (by the Kings Writ directed to the Sheriff of the County wherein the fact is supposed to be done) do command the Sheriff to cause to come before the same Justices, at a day certain by them limited, 12 good and lawful men, Neighbours to the place where the fact is supposed to be done: And upon the day aforesaid the Sheriff ought to return the same Writ before the same Justices, with the Pannel of their Names, whom he hath summoned thereto.

Also of those 12 some of them shall be Hundreders (or of the Hundred wherein the Town is, in which the fact whereupon the suit ariseth, is supposed to be done) Fortesc. Now how many of them must be Hundreders, see hic postea.

11 H. 4. c. 9. Jurors in Inditements shall be lawful and liege-men, &c. and not of persons named by the Justices, but such as shall be returned by the Sheriff, or Bayliffs of Franchises, without any denomination to the Sheriff or Bayliffs before made, by any person of the names, which by him or them should be impannelled (except it be by the officers of the said Sheriff or Bayliffs, sworn and known to make the same, and other officers to whom it appertaineth to make the same according to Law:) And if any Inditement be made (or taken) in any point to the contrary, *Sans denomination.*

trary,

trary, the same Inditement shall be also void, revoked, and for ever holden for none.

Also if any person shall be returned or put in any Enquest, at the denomination of any other, or to serve any turn, &c. if it may so appear to the Court, they ought to remove him, although otherwise his Presentment might be good. Crompt. 128.

Vide 12 E 3. *Abr. d'Ass.* 51, 52. *In assise parcel del Jury fuit mise in le Pannel al preier del Plt. & ascuns al denomination le tenant; Et pur ceo que ils semble al Vic. destre probes & loyal homes & nul faver trove in le Vic. ils fuer. allow.*

Auxi vide Dyer 182. *Jurors impose al denomination del Plt. poient estre challenge* (sc. *les poll poiet estre Chall.*) *per le def.*

Whereas divers great inconveniencies have heretofore been, by reason that Sheriffs and their ministers have returned at the Assizes and Sessions of the Peace, the names of such persons as by labour would be wilfully forsworn and perjured, by reason whereof divers persons have been wrongfully indited of Murthers, Felonies, and other misdemeaners; And sometimes divers great Felons and Murders have been concealed and not presented, &c. Therefore by the Statute made 33 H.8. c.12. It is enacted, that all Pannels returned, which be not at the suit of any party, that shall be made and put in by the Sheriff or his Officers, before any Justices of Gaol-delivery, or before Justices of the Peace in their open Sessions, to inquire for the King, may be reformed, by putting to, and taking out of names of the persons that be so impannelled, by the discretion of the Justices, before whom such Pannels shall be returned: And that the same Justice or Justices shall command every Sheriff, and their ministers (in his absence) to put other persons in the same Pannels by their discretions: And the same Pannels so reformed by the said Justices to be good and lawful. And if any Sheriff or minister do not return the same pannels so reformed, then every Sheriff or minister so offending shall forfeit twenty pound for every such offence, the one half thereof to be to the King, and the other half to him that will sue for the same. And so of Pannels for Trial, upon a Tales de Circumstantibus granted by the Justices. See hic cap. 90.

Reforme per les Justices.

Whereas before (by the Statute of 13 E. 1. c.30.) none were to be put in, or upon any Jury, other than those that were summoned to the same at the first.

And if the Sheriff shall return any Juror which was not lawfully summoned, warned, or distrained in that behalf, and that such person (for default of his appearance) shall lose or forfeit any issues, then the Sheriff (or his minister, by whose default such person shall be returned summoned) shall forfeit to the party so returned, double the value of the issues by such Juror lost or forfeited for his default of appearance. 27 Eliz. c. 6.

Nient Summon.

En assise les Jurors gage lour Ley, que ils ne fuer. Summon; mes semble que il nest Ley. Vide H. 3. e. 3. Abr. d'Ass. 115.

En assise le tenant dit que les gents empannel ne fuer. Summon, & les Jurors mesmes fuer. sur ceo examin, mes nemi sur Serement. Abr. d'Ass. fol. 131. 22. Ass.

Si le Vic. Ou Bayliff Summon ascun destre del Jury, Et nient obstant le Vic. ne retorne eux, uncore pur default d'appearance de suffic' Jurors, si le Plt. testmoigne que ascun de eux queux fuer. issint Summon, sont in le ville, &c. ceo poiet estre trove per Serement del Bayliff, sc. *que ils fuer. Summon) & sur ceo ils seront jurus, nient obstant que ils ne fuer. retorne.* Abr. d'Ass. 132.

Si le Vic. ou son Bayliff Summon (ou warne) ascun destre del Jury, & apres le Vic. ne retorne eux issint Summon, le Vic. serra amerce.

Note

Note, the Law requireth that Sheriffs, and other Officers, shall be indifferent persons of themselves, and shall deal uprightly in returning of Jurors for trials, and therefore the Law doth not allow that the Sheriff, Under-sheriff, Bayliff of Franchise, Coroner, or other person, to be an indifferent or meet person to impanel any Jury or Juror who is a (a) party to the sute or matter in question; or who doth (b) maintain either of the parties, plaintiff, or defendant, in the same suit, or is of (c) counsel with either of them in that sute then in issue; Nor who is within the (d) distress, or (e) receiveth the yearly fee, or weareth the livery or robe of any of the parties to that suit; (f) Nor who is of kindred by nature, or of affinity by marriage, to any of the parties to that suit; Nor who doth return that Enquest, or any of the Jurors therein, at the denomination, (g) or by procurement of any of the parties to the same suit, or of any other person whatsoever; Nor who doth impannel that Enquest, or any of the Jurors therein, for the (h) favour which he doth bear more to the one party than to the other; nor who was an (i) arbitrator in that cause in question, and did treat and confer of the same; Nor who is then (k) in suit of law with either of the parties to this question or trial for any matter of trespass, malice, or evil will; (l) Nor who did baptize the child of any of the parties to this suit and trial, or any of the parties to the same suit did baptize his child: All which the Law doth take as causes of suspicion of favour and affection in the Sheriff, his Under-sheriff, or other Officers; and to be movers to perjury, and therefore upon challenge of the array so being impannelled, and the same proved, the whole array shall be quashed.

Partiality del viscount.

Causes of Challenge.

Challenge.
(a) Br. 88, 89.
(b) Br. 103.
(c) Br. 156.
(d) Br. 9. 121. 158.
(e) Br. 24. 29. 52. 95, 96. 119.
(f) Br. 1. 20. 53. 101. 116. 180.
(g) Dyer 182. Br. 25. 36. 184.
(h) Br. 55 90. 93. 120. 184. 197.
(i) Br. 7. 85. 157.
(k) Br. 45. 52.
(l) Br. 31. 56. 143. 163

Vide Co. L. 157. 158. *plus Concernent Challenges.*

Nota, *que les Challenges sont fait, ou al Array, ou a les Polles:*

Touts tiels sont destre trie per ascun des Jurors, uncore si soit devant ascun Jurors jures, donques le Court assigner Triors, mes quant ascun Jurors sont jures, donques ils trier. 27 H. 8. 26. b. Finch. 60. a.

Challenge al Array est quant le Jury nest indifferentment impanel; donque Challenge ou Exception est prise al Entire nomber.

Challenge al Polle, est quant exception est prise, al ascun un, ou plusors, come nient indifferent.

Array duement fait tempore arraiamenti, *ne serra quash, coment apres ascun del eux fuer. omise, & auters retorne que ne sont indifferent, &c.* Dyer 182 *mes les Polles poient estre challenge in tiel Case.* Ibid.

And further, to the end and intent that all trials might be by indifferent Jurors, therefore the Laws and Statutes of this Realm have provided, That no Sheriff or Bayliff shall impanel any Enquest, nor put into any Jury, any persons but such as are next neighbours, and which have best knowledge of the truth, most sufficient and most substantial people, and worthy of credit, and not suspected, nor procured, nor laboured: And he that doth otherwise, and is attainted thereupon, shall pay unto the plaintiff his damages double, and shall be grievously amerced to the King: and besides the Sheriff stands bound thus to do by his oath: Artic. 14.

What manner of persons.

28 E. 1. c. 9.
34 E. 3. c. 4.
42 E. 3. c. 11.

Note, that the High Sheriff by his Oath must make the Pannels himself, and that as well for Enquiry as for Trial.

Note also, that in writs of Assize (*de Novel dessein, de Mortdanc. de Darein presentment,* & de juris utrum,) the Sheriff is to return the Jury the first day, and they are to appear as soon as the Defendant: But in other original Writs (regularly) no Jury is to be returned before the appearance of the parties, and an issue joyned between them.

Co. L. 159.

If

If the Sheriff or Bayliff of a Liberty shall return a Jury contrary to the form of these Statutes, the parties Plaintiff, and Defendant, may have their action upon the Statute against the Sheriff or Bayliff, &c. For that the Statute is a Prohibition it self; or the party plaintiff may have a Writ, de non ponendis in Assisis, &c. (founded upon this Statute) directed to the Sheriff, commanding him to return a pannel according to these Statutes (and if the Sheriff will not do accordingly, the Plaintiff may have an attachment against the Sheriff, therefore see the form of this Writ, De non ponendis in Assisis: Register 178. & Fitz. 165.

Also if the Sheriff, &c. shall return upon a Jury any persons which are not sufficient to pass in the same action, &c. then such Jurors may have an action upon the Statute against the Sheriff. Fitz. 166. d.

Nul Officer del Vicount. No Sheriff, Bayliff of Liberty, nor any other Officer, shall return in any Pannel or Jury, any Bayliffs, Officers, or Servants, to any Sheriff, Under-sheriff, Coroner, Steward of Franchise, Warden of Prisons, or other of their Officers, upon pain to forfeit forty pound, the one half to the King, the other half to him that will sue for the same. 23 H. 6. 10.

Uncore si le Vicount empanel ses amyes, & cosins, il nest deins cest Stat. per Eliot 21 H. 7. fol. 36. a.

Barons. Barons and Peers of the Realm shall not be impanelled or returned upon Juries by the Sheriff, sc. when any Subject (of the Commons) is to have a trial, either at the Kings suit, or between party and party. Fitz. 165. & Co. 6. 53. & Co. 9. 49. Dyer 315. Co. L. 156. b. Doct. & St. 15.

But every Baron of the Parliament (as well of the Speritualty, as Temporalty) being a party to any action, ought to have Knights returned of their Jury one at least. Fitz. Enquest 43. Co. 6. 53, 54. & Plo. 117. Vide 33 H. 8. Br. Jurors 48. & 27 H. 8. Br. Enquest 99. Dyer 107. 208. & Finch. 60. And so in an Attaint there ought to be a Knight returned of the Jury. Co. L. 156. Fitz. Attaint 69.

Auxi Peere del Realm serra trie in appeale, per Chivalers, &c. & nemy per Pares suos, *Eo que est suite le party. Auterment est sur Enditement de Treason ou Felony, la serra trie par Pares, pur ceo que est suite le Roy; Mes ceo serra intend de Seigniors de Parliament, & que sont temporal Seigniors, & nemy de spiritual Seigniors; Car Evesque (que est Seignior del Parliament) serra trie come autres gents serra, sc. per Chevalers, Esquires, & Gentlehomes, pur ceo que Evesque nest Seignior mes per reason de son Evescherye.* Br. Coron. 153. Treason 2. & 29. Trial 142. & Stamf. 152.

Clerks. Clerks which have lands or tenements by descent, or by purchase, may be impannelled, returned and sworn upon Juries, as well as other Lay-persons (except when they be in the Kings service,) but this is now out of use. Fitz. 166. b.

Mes si le Vicount retorne ascun Seignior sur Jury, sil ne appear, il perdera ses issues retorne, &c. Fitz. 163. a. Finch. fol. 60.

Issint si le Vicount impannel & retorne ascun Clerk, il covient appear, &c. auterment il perdera ses issues, &c. Fitz. 166. b.

Tenant in ancient Demesne. Tenants in ancient Demesne (which are dwelling there) shall not be returned by the Sheriff in any pannel for their Lands within ancient Demesne: but for their other lands or tenements which they have out of ancient Demesne, it seems they may be impannelled and returned by the Sheriff. Fitz. 166. f. Co. 5. 105.

Foresters. Foresters, Verdors, Regardors, Agistors, nor other ministers of the Forest, the Sheriff ought not to impannel or return any of them upon any Jury or Inquisition to be taken out of the same Forest. Fitz. 167. a. 34 E. 1.

Coroners

Fitz. 167. a. Coroners of the County, the Sheriff ought not to return them upon any Jury, or Inquisition: but upon Inquisitions to be made within their County before Commissioners, or Justices of Peace, the Sheriff may return Coroners. Coroners.

Fitz. 165. d. 166. a. d. Persons above the age of seventy years are not to be returned by the Sheriff or Bayliff of Liberties upon Juries; Nor persons being continually sick, or having any continual infirmity, or being diseased at the time of their summons. Stat. Westm. 2. cap. 38. Aged persons.

Uncore si le Vic. retorne persons Decrepite, ou persons ouster le age de 70 ans, ou auter tiels, quant ils veigne al Barr d'estre jure, ils n'avera mie advantage d'alleger que ils sont Decrepite, ou ouster le age de 70 ans, &c. Nec serra ils excuse pur non appearing, si les Justices voile exact lour service. Lamb. 383.

No Alien, Enfant under fourteen years of age, Clergy-men, or Ministers shall be impannelled, Lambr. 383. Alien. Enfant. Minister.

And yet an Enfant above fourteen years of age, ought not to be returned (by the Sheriff) upon any Jury; (Nor appearing) ought to be empannelled and sworn upon any Jury. For Mr. Littleton (div. 259.) tells us, that before 21 years of age a man shall not be sworn upon any Enquest or Jury; *Et ceo semble bon Challenge per le Common Ley; mes le party n'ad ascun remedy per ceo Stat. de* Westm. 2.

Fitz. 165. d. & 166. d. No persons dwelling in another County at the time of the summons shall be returned upon any Jury: But this Statute shall not extend to great Assizes, in which it behoveth many times Knights to pass, although they be not resident in the County (for the scarcity of Knights) so that they have land within the shire. Westm. 2. cap. 38. Hors del County

Fitz. 165. b. 166. d. And every of these persons abovenamed may have their Writ to the Sheriff, commanding him that he shall not impannel them: Or (without any such Writ suing) they may have their action upon the said Statute of Westm. 2. against the Sheriff, wherein the party grieved shall recover his damages, and the Sheriff shall also be amerced to the King: see 8 E. 3. fol. 30. & Regist. 179, &c.

But yet they which do purchase Charters of exemption and liberty, not to be impannelled in Assizes, Juries, and Enquests, if their oaths be so requisite, that without them Justice cannot be ministred (as in great Assizes, perambulations, and in deeds or writings of covenants, where they be named for witnesses, or in attaints, and in other like cases) they shall be compelled to swear, saving to them at another time their foresaid liberty and exemption, Marlb. 52 Hen. 3. 14.

Note, that he which hath a Charter of Exemption, &c. ought to shew the same to the Sheriff; and if then the Sheriff shall impannel him against the words of his Charter, then he may have his action against the Sheriff. 18 H. 8. fol. 5. b. & 30 Eliz. If the Sheriff shall return before Justices of Oyer and Terminer, Justices of Gaol-delivery, or Justices of Peace, a Pannel de Corpore Comitatus (sc. the Great Enquest) to enquire for the King, and some of them have their Charter of Exemption, yet if in their said Charter, there be not this clause, Licet tangat nos, & hæredes nostros, they may be compelled to be sworn, for that the business and service concerns the King. Vide 72. Ass. 5. And for want of those (or the like) words in their Charter, it seemeth also the Sheriff may safely impannel, and Return them, for such services for the King. Cromp. 128.

Also where an Alien is party to any trial, the Enquest shall be De medietate linguæ: 28 E. 3. cap. 13. Alien.

No Indictor shall be put in Enquests upon deliverance of the Inditees of felony or trespass, if he be challenged for the same cause by him which is indicted: 25 E. 3. 3.

S 1 No

No Inditements shall be made by any persons which be outlawed, or which have fled to Sanctuary for Treason or Felony, but by Enquest of the Kings liege and lawful people. 11 H. 4. cap. 9.

Probi & legales. So that by this Statute of 11 H.4. c.9. the Sheriff is appointed to return none upon any Inditement, but such as are Probi & legales homines: probi, sc. such as are not discredited (or disabled in their credits) in law by attainder in conspiracy, attaint, decies tantum, perjury, subornation of perjury, concealment, or such like: Legales, sc. such as are not outlawed, abjured, condemned in a Premunire, or attainted of Treason, Felony, or such like.

Likewise Jurors warned upon trials, &c. they ought (by the Statute made 42 Ed. 3. cap. 11.) to be most worthy of credit, and not suspected: And (by the Statutes made 35 H.8. cap. 6. & 27 Eliz. 6.) they ought to be Liberi & legales homines. In ancient time they were twelve Knights. Co. L. 155. b.

Sir Ed. Coke upon Littleton, fol. 155. telleth us, that by the Law every Juror returned for the trial of any issue or cause; ought to have these three Properties, viz.

1. To be dwelling most near to the place where the question is moved, or where the lands do lie.

2. To be most sufficient, both for understanding, and competency of Estate.

3. To be least suspitious, but only indifferent, and then he is accounted Liber & legalis homo, and that otherwise he may be challenged.

Also they must have sufficiency of Freehold in most cases.

And this Freehold must be in Fee-simple, Fee-tail, or for Life.

It must be in his own Right, or right of his wife.

Althought it be upon Condition it sufficeth. Co. L. 156. b.

They must have Freehold in that County where the cause of the action ariseth, ibid.

Kindred. Also the Sheriff, nor his Officers, shall not do well to return or impannel wittingly upon any Jury, any person who is near of kindred or affinity to either of the parties to that suit.

Servant. Nor any person who is servant to either of the parties.

Deins distr. Nor any person who is within the distress of either of the parties to the suit.

But all the whole Jury must necessarily be of the Shire; and some of them must be of the Hundred where the Land in controversie lieth, or where the Fact is supposed to be done.

And if there be no such Venue (Place or Town) as is laid, &c. yet if the parties do agree that there is such a Venue, the Sheriff cannot return *Nul tiel Venue*, but he ought to return the Pannel de Corpore Comitatus, &c. Fitz. Retor. 27.

In an action of Trespass laid to be done in D. the Def. confesseth, that there is such a Town, here, upon the Venire facias, the Sheriff cannot return that there is no such Town as D. within the same County, for that it were contrary to the confession of the party. 3 H.7. 12. Br. Retor. 87. Hic cap. 36.

Hundredors. Upon the trial of any issue joyned in any of the Kings Courts at Westminster, the Sheriff (or other minister to whom the making of the Pannel shall appertain) shall return in every Pannel upon the Venire facias, six sufficient Hundredors (at the least) if there be so many Hundredors within the said Hundred where the Venue lieth, upon pain to forfeit for every Hundredor that shall be omitted in such return of the number aforesaid twenty shillings. 35 H. 8. c. 3 E. 6. c. 22.

And

And yet if there had not been so many sufficient Hundredors within the same Hundred, if there the Sheriff had returned them out of the next Hundred adjoyning, it seemeth to have been allowable. Vide 50 E. 3. fol. & Abr. d'Ass. fol. 50. & 52. & 2 H. 4. fol.

A Juror may be challenged for that he hath nothing within the Hundred; And yet after that so many be sworn of the Hundred as the Statute requireth, it seemeth that the rest shall not be challenged in that behalf. Na. Br. 174.

But by the Statute of 27 Eliz. cap. 6. upon the trial of any issue joyned in any personal action, if two sufficient Hundredors do appear, it is sufficient, so as no further challenge for the Hundred shall be admitted.

Note, that Hundredors be men impannelled, or fit to be impannelled upon a Jury for any Controversie, and dwelling within the Hundred where the Land lieth, which is in question, &c. whereby they (by intendment of Law) may have Notice de rei veritate, or better knowledge of the Cause.

Also the word here before, Venue, Vicinetum (coming of this word Vicinus) signifieth a Neighbour or near place, sc. the Sheriff, &c. shall return &c. six Hundredors, &c. if there be so many within the Hundred where the Venue lieth, that is, within the Hundred or place where the demand is made; Or within the Hundred where the Town is, in which the fact whereupon the suit ariseth, is supposed to be done, for that vicinus facta vicini præsumitur scire (Vide Co. L. 125. & 158.)

If he hath Freehold in the Hundred, though but half an Acre, it sufficeth. Co. L. 157. See Co. L. 157. a. plus & Cook hic.

And if they have nothing within the Hundred, and yet dwell within the Hundred, and have sufficient Lands out of the Hundred, the Sheriff may return them. But if they have sufficient Lands within the Hundred, and dwell out of the Hundred, it seemeth the Sheriff may not return such. Vide P. 3 H. 6. fol. Abr. d'Ass. fol. 53. quære tamen.

A Juror was challenged for that he was no Hundredor (or had nothing within the Hundred) at the day of the Venire fac. returned, but it appeared that he had at the day of the Return of the Distring. Jurator, and by Justice Harper and the Clerks, he was to be sworn, but Dyer Justice held the contrary. Dyer 316.

But if the Juror were a Hundredor at the Venire fac. returned, he shall be sworn as a Hundredor, although that after he be returned and before he be sworn, he selleth his Land, or changeth his dwelling, For that by his selling, or removing, his Notice is not gone nor impaired. Dyer 316.

27 Eliz. c. 7. 39 Eliz. c. 8. No Sheriff, Coroner, or other person to whom it shall appertain to make return of any Writ, shall return any Juror dwelling out of liberty, without the true addition of his dwelling place, or of the place of his abode (at the time of the said return, or within one year next before the making of such return) or some other addition by which the party returned may be known, upon pain to lose five marks to the King, and five marks to the party grieved. *Addition.*

27 Eliz. c. 7. And the Bayliffs of Liberties, or their Deputies, shall certifie and deliver under their hands to the Sheriff or his Deputy, the names of all persons within their Liberty to be returned upon any Jury, with the true addition of their dwelling place, or of the place of their abode, &c. as aforesaid.

And the Sheriff, &c. shall not return any Jurors within any Liberty with other addition than such as shall be delivered to him by the Bayliff of the said Liberty, or his Deputy, certified under his or their hands, as aforesaid.

Also no extract of issues against any Juror, returned as aforesaid, shall be delivered out, received, or put in ure, without such addition as is put in the original Pannel or Tales wherein such Juror shall be so returned. Ibid.

And no Under-sheriff, Bailiff, or other officer or person whatsoever, shall collect, levy, or gather any issues so estreated, or any other person or persons, than such person and persons, as by vertue of the said estreat is of right charged or chargeable with the payment of the said issues, upon pain that every Sheriff, Clerk, or other person offending contrary to the true meaning of this Statute, shall forfeit to the King five marks, and to the party grieved five marks. Ibid.

CAP. 86.

Their number. NOw to shew how many the Sheriff must return upon a Jury, note that the Writ of Venire facias (for the impannelling of Juries) runneth in this form. Rex, &c. Præcipimus, &c. quod venire facias coram, &c. duodecim liberos & legales homines, &c. And yet the Sheriff is always to warn, and must return 24 lest there should be wanting by reason of Challenges, or lest peradventure any might be sick, or have other just cause of absence. Vide Co.L.155. But in former times it seemeth that Sheriffs used to return unreasonable numbers, to the grievance and great trouble of the people: And therefore it was enacted by the Statute of Westminster 2. cap.38. which was made anno 13 Ed.1. That in one Assise no more shall be summoned, or returned upon a Jury, than four and twenty.

Si le vic. retorne plusors que 24 *Recognitors in Assise, semble le brief abater,* 8 H. 4. fol.20. & 10 H. 4. 8. *mes ceo nest error, ne le vic. ne serra amerce pur ceo,* ut dicitur, *uncore ceux que sont nosme in le Pannel apres le* 24 *avera lour action sur le Stat. vers le Vic. come semble.*

Auxi si per tiel (ou auter) retorn del Vic. le brief abater, per que le plt. est delay de son suite; quære *si le plt. n'avera son action sur le Case vers le Vic. pur tiel delay & prejudice a luy fait.*

Thorp saith that the Law was founded in this, that every Enquest should be taken per duodecim liberos & legales homines, & non per pauciores. 41 E. 3. fol. 36.

Also the Sheriff at every Assises or Goal-delivery, and Sessions of the Peace, is to return 24 Jurors, out of every Hundred, for Enquiry, &c. (as it seemeth by the form of the Precepts) beside 24 others, for the body of the County.

Upon a Precept directed to the Sheriff, from Justices of the Peace (out of their Sessions) to return before them a Jury, to enquire of any Riot, or Forcible Entry, &c. the Sheriff ought to return 24 persons, &c. 19 H. 7. cap. 13. & 8. H. 6. cap. 9. upon pain of 20 l. to be forfeited by the Sheriff, &c.

In a writ of Attaint, the Jury (called the Grand Jury) are 24. who are to be warned the first day. Old Nat.Br.111. & Co. 9. 33. & Finch. 112. And the form of the writ to the Sheriff to impannel and return them, is accordingly. Fitz. 105. h.

And so in all other actions, suits, trials, or enquiries, the Sheriff upon any Precept directed to him, for returning of a Jury, is to impannel and return 24 as it seemeth; although the Trial, or Enquiry, may be by fewer.

The Jury in a Writ of Right (called the Grand Assise) must be of four Knights (or of others in default of Knights) summoned and returned

turned by the Sheriff: which four Knights, &c. are to chuse a Jury of 12 unto them; and so in all there must be 16 (Finch. 412.) which also must be summoned and returned by the Sheriff.

Also by the Statute of Westminster 2 cap. 13. Sheriffs in their Turns shall cause their Enquests to be made of twelve at least: And this Statute herein seemeth to be in affirmance of the Common Law, For by the Common Law, if a man had been endicted by fewer than by 12 the endictment had been void. What respect is to be given to this number of 12. See C. L. 155.

And so in the County Court, if the suit be by a Justicies, the Trial shall be by a verdict of 12 men.

If upon a Venire facias the Sheriff shall return but 23, and 12 appear and give their verdict, this is Erronious. Co. 5. 36. & 37. *Mes ceo est remedy per le Statute de Jeofailes.* Co. Ibid.

Sur issue joyne sur prescription de Common in un grand wast, jacens in two Counties, *Et le Trial agard de* utroque Comitatu, *& in chescun Pannel* 12 tantum *fuer retorne.* Dyer 316.

Fitz. 107. a. Finch. 323. & M. 112. And yet in a writ of Wast, the Plaintiff hath a writ to the Sheriff to enquire of the Wast, &c. for that this is but an enquest of office, the Sheriff may inquire by the oath of six or eight persons of this Wast, and need not to take twelve persons, by the opinion of Mr. Fitzh. 107. c. But termino Pasch. anno 7 E. 6. it was holden in such Case, that the Enquiry ought to be by 12 in number, at the least; And so in all other Inquisitions or Enquiries. Yet in a writ de Ætate probanda, some also have thought that it is not necessary to have the number of 12 upon the Enquest, &c. but that any number above two will serve, for that the Trial is to be by proofs. See Fitz. Livery 5. & Stamf. de Prærog. 79. But the writ directed to the Sheriff to return a Jury before Commissioners, to enquire thereof is in this form, Rex vic. &c. Præcipimus quod Summoneas, &c. 12 probos & legales homines, &c. And again habeas ibi nomina illorum duodecim, &c. Fitz. 257. d. e.

No Jury shall be compelled to appear in any of the Kings Courts at Westminster, for the trial of any issue in any suit, upon any penal Law, for any offence committed above thirty miles from the City of Westminster, except in case where the Attorney-General for the time being, for some reasonable cause in that behalf shewed, shall require the same to be tried at the Bar in any of the Courts of the Kings Majesty, his heirs or successors at Westminster aforesaid, which request shall be noted on the backside of the Writ of distringas thereupon awarded, to the end the Sheriff or his Bayliff may and shall signifie the same to the Jury that are in such cases impannelled: 18 Eliz. 5. 27 Eliz. 10. *To appear at* Westminster.

27 Eliz. Cap. 6. If any Sheriff, Under-sheriff, Sheriffs Deputies, Sheriff or Under-sheriffs Clerk, or any Bayliff of Franchise shall receive, take, or have by himself, or by any other, any sum of money, reward, or other profit directly or indirectly, or do take any promise, make any agreement or assent to have any sum of money, reward, or other profit, directly or indirectly, of any person or persons for the sparing, not warning or not returning of any person to be sworn as a Juror, for the trial of any issue joyned or to be joyned in any of the Kings Courts aforesaid (viz. The Kings Bench, Common Pleas, and Exchequer) or before any Justices: then every Sheriff, Under-sheriff, Bayliff, &c. so offending shall forfeit for every such offence five pound to the King and Informer, to be recovered in any Court of Record, &c. *Spare pur rewards.*

Vide Cromp. 128. Where two prisoners were indicted by one Bill, and two others by another Bill, and one by a third Bill, and the Sheriff returned

returned one and the same Jury, three times, to try them, and the Justices allowed thereof. *Mes le evidence doit estre deliver al un mesme temps vers touts.* Ibidem.

CAP. 87.

The sufficiency of Jurors.

The sufficiency of Freehold. By the old Statutes none were to be put or returned in any Assises or Juries, that might not dispend twenty shillings yearly in land: and if such Assises or Juries were to be taken out of the Shire, none should pass or be returned in them, but such as might dispend forty shillings yearly at least in lands. 13 E. 1. c. 38.

And if the Sheriff or any Bailiff of Liberty shall offend in any point therein they should pi[illegible] the party grieved damages, and be amerced besides to the King.

Note that forty shillings in those days maketh at this present, at the least 6 l. of our current money, if the just value were taken now to the proportion of monies. Mr. Smith de Repub. Angl 30.

And by a later Statute made anno 21 Ed. 2. no Sheriff, Under-Sheriff, Bailiff of Liberty, or other Officer shall impannel any Jurors for the trial of any matter which is to be tried out of their proper County, except such Jurors may spend in lands and tenements 5 l. per annum, at the least: and if they shall do otherwise, the party may have his action upon the Statute against the Sheriff or other Officer. Stat. 21 E. 1. De hiis qui ponendi sunt in assisis. *Pur trial hors del County 5 l.* Fitz. 166. c.

Deins le County 40 s. And none shall be impannelled to try any matter within the County, except they have in lands and tenements forty shillings per annum, and the party grieved may also have his action upon the Statute against the Officer offending herein: Fitz. N. B. 166. e. Stat. 21 E. 1.

Touching life. Also by the Statute of 2 H. 5. cap. 3. no person shall be admitted to pass in or upon any enquest to be taken or made between denizen and denizen, upon trial of the death of a man; nor in any enquest betwixt party and party, in any plea Real; nor in plea Personal, whereof the debt or damages declared amount to forty marks, if the same person have not lands of the yearly value of forty shillings above all charges, so that he be challenged for that cause by the party, &c. See Stat. 8 H. 6. cap. 20. & Co. L. 272. 2 H. 5. 3. *Pleas Real.* *Or forty marks damages.*

De medietate linguæ. And by a late Statute made tempore Caroli Secundi, which is since expired, none should be Returned but those which had 20 l. per annum.

But in all manner of Enquests, where any alien is a party to any trial (although the King be a party) the one half of the Enquest or Jurors shall be of aliens (if so many aliens be in the Town or place where such Enquest is to be taken, &c.) And that although such aliens have not lands to the value of forty shillings per annum. 27 E. 3. c. 8. 28 E. 3. c. 13. 8 H. 6. c. 29.

And yet where any Egyptian shall be indited of any felony, the Enquest that shall pass between the King and such party shall be altogether of English-men: 22 H. 8. c. 10. 1 & 2 P. & M. 4 & 5 Eliz. c. 20.

Neither shall a Scotish-man have his trial here, per medietatem linguæ, for that they are accounted subjects and not aliens; see Dyer 304. & Co. 9. fol. 117.

By the Statute made 35 H. 8. cap. 6. it is enacted, that in every case where such persons as should pass upon the trial of any issue (joyned in any of the Kings Courts of Record commonly holden at Westminster) ought by the Law to spend forty shillings by the year of Freehold for term

term of life, That writs of Venire facias, which from thenceforth shall be awarded and directed for the impannelling of such persons as shall trie the same issue, shall be in this form, Rex, &c. præcipimus, &c. quod Venire facias coram, &c. 12 liberos & legales homines de vicineto de B. Quorum quilibet habeat quadraginta solid' terr' tenement' vel reddit', per annum, ad minus, per quas rei veritas melius sciri poterit, & qui nec, &c. (after the ancient form.) And in every case where it is not requisite, that the persons that shall pass upon the trial of any issue (joyned in any of the Kings Courts aforesaid) shall dispend forty shillings by the year of Freehold, that then the Writ of Venire facias that shall be awarded shall be made after the form aforesaid, omitting the clause Quorum quilibet habeat 40 s. terræ, tenement', vel reddit. per annum ad minus. And that upon every such writ of Venire facias that shall have the said clause Quorum quilibet, &c. the Sheriff or other minister to whom the making of the Pannel shall appertain, shall not return in any such Pannel any person, unless he may dispend forty shillings by the year at the least, of estate of Freehold, out of ancient Demesne, and within the County where the issue is to tried (and also shall return six sufficient Hundredors at least, &c.) upon pain to forfeit for every person being returned in any such Pannel that cannot dispend forty shillings by the year (as aforesaid) twenty shillings. *6. Hundreders.*

Eliz But after by the Statute made Anno 27 Eliz. cap. 6. it was enacted, That in all cases where any Jurors to be returned for the trial of any issue (joyned in any of the Courts of the Kings Bench, Common Pleas, and the Exchequer, or before Justices of Assize) by the Laws of this Realm ought to have estate of Freehold in lands, tenements or hereditaments of the clar yearly value of forty shillings, that in every such case, the Jurors that shall be returned shall every of them have estate of Freehold (in lands, tenements or hereditaments) to the clear yearly value of four pounds at the least, and that the writs of Venire facias, *4 l. per an.* which shall be awarded for the impannelling of Juries in the cases aforesaid, shall be in this form, Rex, &c. præcipimus, &c. quod Venire *Venire fac.* fac. coram, &c. 12 liberos & legales homines de vicineto de B. Quorum quilibet habeat, quatuor libras terræ, tenement. vel reddit. per annum ad minus, &c. And that upon every such writ of Venire fac. the Sheriff or other minister unto whom the making of the Pannel shall appertain, shall not return in any such Pannel any person unless he may dispend four pounds by the year, at the least of Freehold, out of ancient Demesne, within the County where the issue is to be tried, upon pain to forfeit for every person being returned in any such Pannel that cannot dispend four pound Freehold (as aforesaid) twenty shillings.

And in every writ of Venire facias wherein the aforesaid clause (Quorum quilibet habeat quatuor libras, &c. shall be omitted, there the Sheriff or other minister to whom the making of the Pannel shall appertain, shall not return in any such Pannel, any person unless he may dispend some lands or tenements of estate of Freehold out of ancient Demesne within the County where the issue is to be tried, upon pain to forfeit twenty shillings for every person returned in any such Pannel, that cannot dispend some land by the year.

35 H.8.c.6.
2 E.6 c.32.

27 El. c.6.
35 H.8.6.

But note, that these Statutes made Anno 35 H 8. & 27 Eliz. do not extend to any Juries to be returned in any City or Town Corporate, or other Town or place priviledged to hold plea, or in the twelve shires of Wales, but that there they shall and may be returned, as heretofore they lawfully might have been. *Corporate Towns.*

A Juror was challenged for not having sufficient freehold, and it was found that he had nothing but certain lands which one H. had letten to him

him for term of life, yielding a certain Rent, with a clause of Reentry for default of payment thereof, and the opinion of the Book 7 H.4.fol.1. was, that for such a Freehold, so defeasible, he was not to be sworn; and yet the Reversion also of the Land was in the wife of the Juror; quod mirum, per Br. titulo Challenge 34.

If A. shall infeoff B. to the use of the payment of certain money (to be levied out of this land) to the use of a third person, Now during the time of the payment of this money A. is not sufficient Freeholder to pass in a Jury. Keil. 167. But here the Feoffee is sufficient, for the Freehold which is in him. Ibid.

If A. maketh a Lease for 10 years, absque aliquo reddendo, yet A. shall be a Freeholder to pass upon a Jury, for the Freehold which is in A. ibid.

If A. letteth his lands for years, the Remainder to B. in fee, here B. may pass upon a Jury, for the freehold which is in him (in Rem.) if the lands be of the yearly value of 40 s. ibid.

A Juror was challenged for that he had not sufficient within the Hundred the day of the Venire fac. returned, and it appeared that he had sufficient at the day of distress, and was therefore sworn. Dyer 316.

So if he hath sufficient at the time of the Pannel made, though he had not at the distress, yet he shall be sworn. Ibid.

See plus hic cap. 92.

In Attaints. Sheriffs, Bayliffs of Franchise, and Coroners ought to return in writs of Attaints in plea of land of the yearly value of 40 s or more; 15 H.6 c 5. and in actions of Attaint for Deeds concerning land of the yearly value of forty shillings; and in personal actions of forty pound or more, such persons inhabiting within his Bayliwick which can dispend 20 l. per annum, besides all charges, for term of life at least, and out of ancient Demesne, and Cinque Ports; and if there be not sufficient persons under the degree of a Baron inhabiting within the County which can expend twenty pound per annum, then they shall impannel other persons of the most sufficient in possession of yearly value of lands under the value of 20 l. per annum, upon pain of twenty pound.

18 H.6. c.2. H.7.11. 21 H.7.38. Keil. 97.

20 pound per annum.

By another Statute made anno 23 H. 8. where the thing in demand 23 H.8. c.3. extendeth to forty pound (and concerneth not mans life) every of the Grand Jury that shall pass in an attaint in such case must have lands to the value of twenty marks by the year of Freehold out of ancient Demesne: But where the thing in demand (being a thing personal, as Debt, Trespass, or the like) shall be under forty pound, it sufficeth if every person of the Grand Jury, which shall pass in the same attaint, may dispend five marks by the year of Freehold land out of ancient Demesne, or be worth a hundred marks in Goods.

20 marks.

5 marks.

Tales into another County. And if there be not persons of such sufficiency of Freehold within the Shire (or place where any of the said attaints shall be taken) as may pass in the same, then a Tales shall be awarded into the Shire next adjoyning (by the discretion of the Justices before whom the same attaints shall be taken) which shall be warned to appear upon like pains as is aforesaid, and enabled to pass in the said attaints, as if they were dwelling in the shire where the same attaint shall be taken. 23 H.8. c. 3.

Before Escheators. Also no Sheriff or other person upon any Writ or Precept to them directed to return before any Escheator or Commissioners, shall return any person to enquire of any lands or tenements, except such person, or others to his use, have lands or tenements of the yearly value of forty shillings above all charges, within the same shire where the enquiry shall be made, upon pain to forfeit 5 l. for every Juror otherwise returned (except the same Jurors be returned before an Escheator in a City or Cor-

1 H 8. c. 8. 3 H. 8. c. 4.

Corporate Town, or which is made by any person having priviledge to make Escheators.

And by an old Statute made anno 34 E.3.c.13. such Jurors returned before Escheators must be men of good fame, and dwelling in the same County where the inquiry shall be.

8 H. 6. c. 9. Upon every Precept directed unto the Sheriff from Justices of Peace to enquire of Forcible Entries or Detainors, the Sherif ought to return sufficient persons dwelling next about the lands forcibly entred upon or detained, whereof every man to be impannelled to enquire in that behalf shall have freehold lands or tenements of the clear yearly value of forty shillings at least above reprises; and for every default herein the Sheriff shall forfeit twenty pound, and also pay a fine to the King: And yet note, that if such Jurors shall not have lands of such yearly value, yet their presentment is good for the King, but then quære whether the party put out forcibly, &c. shall have restitution, &c. Lamb. 155. *Upon Forcible Entry.*

19 H. 7. 13. Upon a precept directed unto the Sheriff from the Justices of Peace, to return before them a Jury to enquire of any Riot, Rout, or unlawful Assembly, the Sheriff shall return four and twenty persons dwelling in the Shire where such Riot, &c. shall be committed, whereof every one of them shall have lands, &c. within the same Shire to the yearly value of twenty shillings per annum of Freehold, or of twenty six shillings and eight pence of Copihold, or of both over and above all charges, and the Sheriff in default of such return shall forfeit to the King the sum of twenty pounds. *Upon Riots.* *xx s.*

Also in Liberties and Franchises, and in Cities, Burroughs, and other Towns and places infranchised (which have Justices of Peace therein) the Bayliffs of the Franchise, or other Officer, ought to impannel sufficient Jurors to enquire of Riots (if sufficient persons may there be found) upon pain of 40 l. 2 H. 5. cap. 8.

2 H. 5. c. 8. Upon the default of the Justices of Peace and Sheriff in not executing the Statutes made for suppressing of Riots, &c. the party grieved may have a Commission out of the Chancery to enquire of the matter, as also of the defaults of the Justices and Sheriff, upon which Commission the Coroners of that County where the Riot, &c. was committed, shall make the pannel, and shall return only such persons for that inquiry as have land, tenements, or rents to the value of 10 l. by the year at least: But if the Sheriff (reputed to be in default as aforesaid) be discharged of his office at the time that such Commissions shall be awarded out of the Chancery, then the new Sheriff of the same County shall make the pannel upon this Commission, and shall return only such persons as have ten pound by the year at least (ut supra) and in default thereof the new Sheriff shall forfeit forty pound. *10 pound per annum.*

3 H. 7. c. 1. Enquests taken by the Justices of Peace to enquire of concealments of other enquests taken before them, or others, &c. every man that shall be returned upon such enquests (of enquiry) must have lands and tenements to the yearly value of forty shillings at the least. 3 Hen.7.c.1. *Enquests of enquiry.*

The sufficiency of Jurors in the Sheriffs Torne. See hic postea tit. Sheriffs Torne, & 1 R. 3. cap. 4. *Sheriffs Torne.*

Of what sufficiency Jurors impannelled in the City of London (in several cases) must be. See the Statutes made 11 H. 7. cap. 21. 4 H. 8. cap. 3. 5 H. 8. cap. 5 & 37 H. 8. cap. 5. P. Jurors 16. *In London.*

What sufficiency is required in Jurors to enquire of Felonies committed in Corporate Towns. See the Statute made anno 23 H. 8. cap. 13. & P. tit. Jurors 15. *Corporate Towns.*

The sufficiency of other Jurors in Corporate Towns. See the Statute made 35 H. 8. cap. 6.

Tt Of

Lancaster. Of what sufficiency those Jurors must be in the County of Lancaster, which shall indict a forreigner dwelling in another Shire, Et e converso. See the Statute made anno 33 Hen. 6. cap. 2. P. Jurors 17.

In the County of Lancaster every Juror must have 5 l. per annum within the same County, who shall enquire, or pass in trial of any Treason or Felony there. 7 H. 5. cap. 1. & 18 H. 6. cap. 12.

Of what sufficiency those Jurors must be which in any other County shall indict any person inhabiting within the County of Lancaster. ibid.

Wales. The sufficiency of Jurors in Wales. See the Statute made anno 43 H. 8. cap. 26. Poulton tit. Wales 70.

Note that it is very needful for the High-Sheriff to have a book containing the names of all the Freeholders within his County, and their sufficiencies: so that he himself may not only make the pannels according to his oath, Artic. 14. But also that he may the better know their sufficiency and ability, to be Pledges, or Sureties, &c. for other persons, as occasion shall serve: And besides if the Sheriff shall return any Juror in issues which is not sufficient, the Sheriff may be inforced to pay there issues for them.

CAP. 88.

The Antiquity of Jurors.

The trial of Juries (sc. of all matters of fact, by the oaths of twelve men) was long time before the Conquest, and is one of the invincible arguments of the antiquity of the Common Laws of this Realm, being only appropriated to them. Co. l. 3. & Preface.

Master Cambden (in his Britannia, pag. 153.) saith thus thereof; Whereas Polidor Virgil writeth that William the Conqueror first brought in the trial by twelve men, there is nothing more untrue, for it is most certain and apparent by the Laws of Etheldred the Saxon King, that it was in use many years before, &c. See Co. L. 155. b. & Eph. anno Christi 979.

By some opinions Lucius King of England ordained this our Trials by twelve of matters in fact, (which should be about anno Domini 190.) Master Selden, cap. 10. And this he saith that godly King Lucius did according to the Example of Christ, who ordained and those twelve to bear witness of his Resurrection. Wherewith agreeth the Apostolical Canons. See John 15. 27. Acts 1. 22. & 10. 41. And Sir John Fortescue saith, That Juries were used among the Christian Britains.

Again Thorpe (a reverend and learned Judge) in the time of King Edward 3. concurring in opinion with these before named, saith, that it was a foundation of the (Common) Law, that every Enquest should be taken per duodecim liberos & legales homines; And if it were a foundation of the Law, then it was one of the first Laws. See 41 E. 3. fol. 36.

Besides, we must needs confess, that no Law can be without trials; Now in the City of London (a most ancient City) they had this trial by 12 in their Hustings, and in the time of the Britains, so in all other ancient Cities where they have like customs and liberties: yea the ancient Hundred Courts, Shiremotes, Wardmotes, Swainmotes, and Leets, which are often mentioned in the Saxon Laws as things

in use, they had no other kind of trial or inquisition, but this by twelve men; and that by custom or prescription, whereof no beginning could be proved by any Record, writing, or other lawful testimony; for that is in Law said to be by Prescription, and not the continuance of 50.60, or 100 years. See plus Mr. Selden, cap. 10.

For the excellency and indifferency of this kind of trial, and why it is only appropriated to the Common Laws of England. See Justice Fortescue, cap. 25, 26, 27, 28, 29, 30, 31, 32, &c.

CAP. 89.

Return of Issues.

NOw concerning issues to be returned by the Sheriff for default of appearing, the Sheriff shall do well to consider of his oath, whereby he stands bound truly to set, and return reasonable and due issues upon all such as be within his County, sc. upon the Defendants or Tenants having sufficient lands or goods, after their estate, to the end they may the rather appear.

Concerning the Defendants, the Statutes to this purpose are as followeth:

First, by the Statute of Westm. 1. cap. 44. The Tenant or Defendant making default of appearance after the first Attachment returned, &c. shall lose and forfeit issues.

And when the Tenant or Defendant is distrained for such issues, it seemeth that the Sheriff ought to deliver them to the Mainperners, or Sureties; and if the party maketh default at his day, the Sheriff shall answer for those issues in the Exchequer, by the Estreats thereof made, And the Sureties shall be answerable therefore to the Sheriff; And this is the Order limited by the Stat. of Westm. 1. ut dicitur.

Westm. 2. c. 39. 1 E. 3. c. 5. But for as much as Sheriffs and Bayliffs of Liberties many times make false returns as touching the Articles, Quod de exitibus, &c. sometimes returning that there are small issues when they may return great, and sometimes do make mention of no issues, It is therefore ordained by the Stat. of Westm. 2. that if the Plaintiff shall demand Oyer of the Sheriffs return, it shall be granted him, and if he aver (or offer to prove) that the Sheriff, &c. might have returned greater issues, he shall have from the Justices of the one Bench, or the other, a writ to the Justices of Assise that they shall enquire thereof, (sc. that they shall enquire of what and how great issues the Sheriff might have made his return from the day of the Writ purchased, unto the day of the return thereof:) And if it be found that he hath not answered for the whole, then upon the return thereof, he shall be charged with the overplus by the estreats of the Justices delivered into the Exchequer, and besides shall be grievously amerced for his concealment. Vide Br. Issues 2.4.6. *Issues upon the Defendant or Tenant.*

And yet quære whether the Sheriff may after levy the same of the Tenant or Def. for that it is contrary to his Return, &c. Vide Abr. d'Ass. fol. 137.

For the form of this Writ directed to the Justices of Assise, to enquire of the issues. See Register, fol. 26. & 58.

And by the same Statute of Westm. 2. within or under the name of *Issues quid.*

issues are contained rents, corn in the grange, and all moveables (except horse, harneis, apparel, and houshold-stuff.)

But where Corn is growing, it seemeth the Sheriff is not bound, (or needs not) to return that for issues, for that it may so fall out that the Corn may afterwards be spoiled or lost, by reason of tempest, or otherwise, before it can be carried, &c.

Also it hath been holden that the Sheriff needs not to Return in issues, any Rent except it be due at the day that he shall make the Distress: And if it be then due, the Sheriff may then come to the tenant, and command him to pay the same Rent to his Lord, &c.

But note, that the Sheriffs and Bayliffs of Liberties by the said Statute of Westm. 2. & 1 E. 3. 5. must return sufficient, and good and reasonable issues upon such persons as have lands or goods sufficient, sc. they must return in issues so much as the party may receive and take, or as ariseth of the profit of the lands within that County, and the Rents from the day of the teste of the writ, until the day of the return thereof, and the value of his goods which he hath in all that time (except his horses and their furniture, and his apparel and houshold-stuff,) and if the Sheriff or Bayliff of Liberty doth not accordingly, they shall answer the surplusage. See 27 H. 8. f. 3. & Br. Issues 1, 2, 4, 6, 7, & 21.) And Mr. Fitzh. saith there that this Statute of West.2. is good Law; and for that it is not in use much inconvenience is.

Quantum. Westm. 2. 39. 27 H. 8. f. 3.

As if his land be worth xij C. l. by the year, and one months space between the Teste and the Return, there C. l. issues must be returned upon him. Finch 353. Finch. 353.

The Sheriff returned upon the tenant or defendant but 7 d. in issues upon the Distringas, and therefore the Sheriff was to be amerced (by the opinion of Fortescue) for that he had returned less than the Costs of the writ of Distringas, which is 13 d. But quære whether the Sheriff shall be amerced only, for returning too small issues, For by the opinion of Paston in the same case, it seemeth rather that the Plt. shall have his Averment against the Sheriff upon the aforesaid Statute of Westm. 2. and so to have his writ to the Justices of Assise, to enquire thereof, and so to charge the Sheriff with the overplus; and besides to have the Sheriff amerced according to the Statute. Vide Abr. d'Ass. 115. & 137. & 19 H. 6. 8. Br. issues 6.

And yet where the Sheriff hath returned too small issues, upon the tenant or defendant, if in time he prayeth to amend his return therein, the Court in favour will permit it. Br. Issues 1. 27 H. 8. fol. 3.

In a Writ of Right of ward, or of ejectment of ward, after the Grand Distress, if the Def. cometh not in at the day prefixed, and that Proclamation be made, &c. according to the Statute of Marlebr. cap. 7. the Sheriff ought to return issues upon the Defendant, &c. Vide hic cap. 102.

Upon a Distringas against the def. the Sheriff must return issues. Hic cap. 56.

Upon a Distring' to Distrein the suiters for not suffering the Sheriff to Record the Plea in a Court Baron, &c. the Sheriff is to return issues upon the suiters. Fitz. Record. 7. & Record. 15.

But in the former case the Sheriff returned but 12 d. in issues upon the suiters, Fitz. Record. 15.

And upon a Distringas, though the words of the writ be Quod distring' per omnes terras & catalla sua, &c. yet the Sheriff ought to distrein him but reasonably, &c. Hic cap. 56. tit. Distringas.

And yet if the issues returned upon any be never so great, it seemeth the party hath no remedy, but they shall be forfeited, or the Sheriff shall be charged therewith if they be estreated. Hic cap. 11.

Upon

8 E. 4. c. 2. Upon proces against any person, for retaining or giving of liveries, or against any which is retained (contrary to the Statute,) the Sheriff ought to return upon the Defendant (being a person sufficient) no less than 20 s. at the first day of the distress, and at the second day 30 s. and at the third day 40 s. and so at every day after more by 10 s. in issues; and if any Sheriff do the contrary, he shall forfeit for every such return against the form aforesaid 20 s. *Retainers.*

The Stat. of West. 2. cap. 39. doth give an averment against the return of the Sheriff if he return too small issues; and yet a man shall not averr against the Sheriffs Bayliff, that he might have returned greater issues, &c. But against the Sheriff himself only, by this Statute of Westm. 2. Fitz. Averrment 43. *Averrment.*

But by the Statute of 1 E. 3. cap. 5. made against the false returns of Bayliffs of Franchises (which have full return of writs) a man shall have Averrment, and recover against them (as well as against the Sheriff) and that of too little issues returned, as in other cases: and all the punishment shall fall only upon the Bayliffs.

Fitz. Averrment 15. Note, that the Plaintiff may averr against the return of the Sheriff when he returneth too small issues, as aforesaid. But the Def. cannot have such averrment, and this by force of the Stat. of West. 2. c. 39. For before that Statute the Plaintiff had no remedy at the Common Law, but only his action of the Case against the Sheriff in such case, which remedy the Plaintiff may have still.

Fitz. Averment 25. & 45 Note also, that an averrment of too small issues lieth as well against the return of the Sheriff of too small issues returned upon Jurors, as upon the party, &c. for this Stat. of West 2. was made to oust all delays by false returns; and the party is as well delayed where the Sheriff returneth too small issues upon the Jurors, as where he returneth too small issues upon the Defendant, 11 E. 2. Fitz. Averrment 45.

And herewith agreeth the Book 2 R. 3. fol. 12. b. where the Sheriff should have been amerced for returning too small issues upon Jurors, but that the Sheriff was there present, and amended the same.

And yet in the Book 10 H. 7. fol. 11. some hold that too small issues returned upon Jurors, was not within the Statute.

CAP. 90.

What Issues the Sheriff, &c. must return upon Jurors.

By the Common Law the Sheriff was to return no issues, upon a Venire facias Jurator. Neither was it needful (or at least not used, nor required) by the Common Law, to return any great issues, upon any Writs of Habeas Corpora or Distring' Jurator. until the Statutes of 35 H. 8. cap. 6. & 27 Eliz. cap. 6.

But for the more expedition of Justice, and more speedy Trial of issues which are to be tried by the verdict of 12 men, (which in former times were greatly delayed, and that chiefly for lack of appearance of the persons returned to try such issues) there have been divers Statutes made for the better expedition of Justice to be had in such manner of trial of Issues; As also in some cases of Enquiry, as hereafter followeth.

And as it is the Law that for execution of Justice every man shall be impannelled when need requireth, So it is a reasonable Law that such

as will not appear, should have some punishment for their not appearing (for else the Law would be clearly frustrate in that point.) And the punishment or pain in such case is, that they shall lose issues to the King for their not appearing. Dr. St. 38.

Habeas Corpus, or Distring., Jur. And therefore upon every first Writ of Habeas corpora or Distringas Jurator. with a Nisi prius, delivered of record to the Sheriff or other Minister, the Sheriff or other Minister to whom the making of the return shall appertain, shall return in issues upon every person impannelled and returned upon any such Writ at the least 10 s. and at the second Writ of Habeas corpora or Distring. with a Nisi prius, upon every person impannelled and returned upon any such Writ 20 s. at the least, and at the third Writ, &c. 30 s. and upon every Writ that shall be further awarded to try any such issue, to double the issues last afore specified, until a full Jury be sworn, or the process otherwise ceased, upon pain to forfeit for every such return of issues to the contrary five pound. 35 H. 8. c. 6. 27 El. c. 6.

al { 1. 10 s. 2. 20 s. 3. 30 s. 4. &c. double.

Corporate villes. But this extendeth not to any issues to be returned in any City, or Town Corporate, or other Town or place priviledged to hold plea, nor in the 12 Shires of Wales, but that they may be returned as before they lawfully might have been, this act notwithstanding. Stat. 27 El. cap. 6.

Note, that upon reasonable cause proved before the Justices of Assise, the said Justices may discharge any Juror of the issues upon him returned, and the Sheriff, &c. having commandment by the said Justices to omit the returning of such issues as aforesaid upon such Juror, shall be therein discharged of the penalty aforesaid, for the non-returning of the said issues; also if the Justices of Assise do not come at the day appointed, or that the Assise be discontinued for any other occasion (other than by default of Jurors) then every of the Jurors shall be discharged of their issues, &c. and the Sheriff, &c. shall be likewise discharged of the penalty of these Statutes for the not returning of such issues, as therein are limited. 35 H. 8. c. 6. 2 E. 6. c. 32.

Upon a Distring. Jurator. super Appell. mortis (where they were Knights, and Esquires who were in the writ) there was but 8 d. returned (by the Sheriff) upon every Juror, and the Sheriff had been therefore amerced, but that he was there present and amended it, and set or returned upon every Juror 2 s. 2 R. 3. 13.

Vic. amerce.

And yet if the Sheriff upon a Distringas Jurat' shall return no manner of issues, and a full Jury shall appear, &c. this is no error; for the King hath no loss, and the issues are for the King, which he is not to have if a full Jury do appear. Br. Retor. 86. 5 H. 7. f. 8.

The same Law is, that if the Sheriff shall return issues upon 12, and none upon the rest, and a full Jury shall appear. Ibidem.

If the Sheriff shall return a Juror in issues which is not sufficient (or hath no land) he is punishable, sc. the Sheriff shall be charged to pay those issues himself.

Sur Juror nient summon. If upon an Habeas corpora, or Distringas Jurat. the Sheriff, &c. shall return any issues upon any Hundredor or Juror, whereas the same Hundredor or Juror was not lawfully summoned, warned, or distrained in that behalf, then the Sheriff, &c. shall lose for every such offence double so much as the said issues returned upon such Hundredor or Juror not lawfully summoned, warned, or distrained, shall amount unto, the one half thereof to the King, the other half to him that will sue for the same. 5 El. cap. 25. & 35 Henric. 8. cap. 6.

In Attaint. No Sheriff, or other Officer, shall return in the Kings Courts less issues in actions of Attaint, than forty shillings upon the first writ of Distress, and five pound at the second writ of Distress, and the double 15 H. 6. c. 5.

upon

upon every other writ of Distress, against the persons impannelled and returned to be Jurors in the same action, upon pain to forfeit twenty pound to the King and party grieved. See the Statutes of 11 H 7. c. 21. 23 H. 8. c. 3. & 13 Eliz. c. 25. 1. 40 s. al 2. 5 l. 2. &c. double.

What issues shall be returned upon the Jurors in London. See 11 H. 7. c. 21. 4 H. 8. c. 3. & 5 H. 8. c. 5 P. Jurors 16, & 17. In Londres. Sur Forc. Entry.

8 H. 6. c. 9. Upon every precept directed to the Sheriff from Justices of Peace to enquire of forcible entries, or deteiner, the Sheriff ought to return upon every Juror, at the first day, or upon the first precept twenty shillings in issues; and at the second day forty shillings, and at the third day five pound, and at every day after the double, upon pain to forfeit to the King twenty pound for every default, and besides to make fine and ransome.

19 H. 7. c. 13. Upon every precept directed to the Sheriff from Justices of the Peace, to return them a Jury to enquire of a Riot, the Sheriff ought to return upon every person so by him impannelled, at the first day twenty shillings in issues, and at the second forty shillings, and the Sheriff for his default herein shall forfeit 20 l. Sur Riots.

2 H. 5. c. 8. By the Statute of 2 H. 5. cap. 8. upon a Commission granted out to enquire of the defaults of the Justices of the Peace and old Sheriff, in not executing the Statute made for suppressing of Riots, the Coroners shall return the Enquest, and they shall return upon every person impannelled, at the first day (when issues are to be lost) 20 s. at the least, and at the second day 40 s. at the least, and at the third C s. at the least, and at every day after the double at least, upon pain of 40 l. and if it happen that the said Sheriff so reputed in default be discharged of his Office at the time that such Commission shall be awarded out of the Chancery, then the new Sheriff of the same County, his successor mediate or immediate for the time being (and not the Coroners) shall make the pannel upon the Commission, returnable in the manner and form as the said Coroners should do in time when the Sheriff so reputed in default continued in his Office, and the same new Sheriff in default of returning such issues, which the Coroners be to return as aforesaid, shall forfeit 40 l. to the King.

Upon an Information taken upon the Statute of Liveries (made anno 8 E. 4. cap. 3.) the Sheriff ought to return in issues, at the first day 20 s. at the second day 30 s. at the third 40 s. and at every day after for every time to increase them 10 s. upon pain of 20 s. to the Sheriff for every default.

4 H. 6. 7. Cromp. 126. a. Note also, that if there appear so many Jurors, so that twelve are sworn upon the issue, then the rest which made default shall not lose any issues; otherwise (sc. if twelve do not appear) those which appear shall have their appearance noted, sc. entred and recorded, and shall save their issues, and the rest which made default shall lose their issues. Br. Issues 16. Stat. 8 E. 4. cap. 3. 12 appear, nul issues serra.

And yet when eight, &c. of the Jury appear, and the rest make default, by reason whereof they are to lose their issues, and at the same time the Plaintiff is demanded, and is nonsuit, this shall save the issues of the Jurors, quod nota. Br. Issues 14.

A Jury do appear and after make default, they shall lose their issues. Br. Enquest 42.

Tales is a Latin word, signifying like or such, and is here used for a supply of men impannelled upon a Jury, and not appearing, or at their appearance challenged as not indifferent; Here the Judge upon Petition granteth a supply to be made by the Sheriff, of some other men there present, Tales, or like in reputation to those that were impannelled.

Also

Also by the Statute of 35 H. 8. where the principal Jury do not fully appear, or that after appearance of a full Jury, by challenge of any of the parties the Jury is like to remain untaken for default of Jurors, there the Justices upon request may cause a Tales de circumstantibus to be returned or named by the Sheriff, &c. But yet those of the principal Jury which made default shall lose their issues notwithstanding that the Jury shall be full upon the Tales, &c. Br. Issues 16. 35 H. 8. c. 6. P. Juror 23. See Dyer 200, 246. & 376.

Note, that a Tales de circumstantibus may be granted at the suit or request of the Plaintiff, or the Defendant; as also upon and in popular actions; and the Sheriff (or other minister to whom the making of the return shall appertain) shall add and annex to their former pannels, the names of the persons so named and impannelled upon the Tales, &c. 35 H. 8. c. 6. 4 P. & M. 7. 14 El. c. 9.

Note, that there may be many Tales, one after another till the Jury be full; as a Decem Tales, an Octo Tales, a Sex Tales, &c. Finch. 4. 14.

But every Tales must be of a less Number than the former; as after an Octo Tales a Sex Tales; but not a Decem Tales, nor an Octo Tales again. Ibidem.

Also every Tales must be fewer in number than the Principal Pannel: As where the Pannel or Jury is of 12, there may be a Decem, or Octo Tales, &c. Or in any Attaint where the Jury is 24, there may be a Viginti Tales, &c. But in Indictments and Appeals that touch life, a Tales may be of a greater number than the principal Pannel. Ibidem.

Also every Tales must be an even Number. Ibidem.

And they must be others of the same sort that the principal Pannel were of. Ibidem.

Issues returned upon Mainpernors or Pledges, &c. See antea tit. Issues.

Estreats (er a deliver in l'Escheqer yearly al Mich. By the Statute made 51 H. 3. de Scaccario, all the Kings Courts, Justices, Commissioners, and others, shall deliver into the Exchequer (at Michaelmas yearly) the Estreats of Fines and Amerciaments made, assessed or taxed before them, and of all issues and other things wherefore the Estreats are wont to be delivered there, &c. And from thence they shall make proces against the parties to answer thereunto, and to satisfie the King of that which is done unto him.

The Commissioners of Sewers shall also yearly (at Michaelmas) deliver their Estreats into the Exchequer, &c. 13 Eliz. c. 9.

Also the Estreats of the value of the Cattel forfeited in case the Secunda Superoneratione shall be put into the Exchequer by the Justices.

See plus hic antea titulo Fines.

Vic' ne levier sans garr'. No Sheriff, &c. shall levy any issues other than he hath warrant for out of the Exchequer by the Estreats of the Justices; neither shall the Sheriff be charged with any other issues than those for which he shall have such warrant out of the Exchequer. And in those Estreats every man shall be charged for issues forfeited like as of amerciaments. And by the Stat. 43 E. 3. cap. 9. Sheriffs must levy their issues by their extracts under the Seal of the Exchequer, upon pain to yield treble damages to the party grieved, and to make fine to the King. 27 E. 1. c. 2. P. Sher. 19. *South Seal.*

And yet (as Mr. Lambert telleth us) The Estreats of the Justices of Peace be now an immediate warrant for the Sheriff, to levy not only the Fines and Amerciaments, but also all other issues, penalties, losses, forfeitures, and sums whatsoever arising before them, (And therefore whatsoever sums are to be Estreated into the Exchequer) the same the Sheriff may now levy upon the said Justices Estreats,

Lambert

And note, that these Estreats of the Justices (being made by the Clerks of the Peace out of their Records) are to be indented by the Clerks of the Peace, and by them to be delivered to the Sheriff and to the Barons of the Exchequer, Lamb. ibid.

But the Sheriff in many Counties is herein wronged by the Clerks of the Peace, who receive all the Fines, and thereout pays (or might pay) the Justices wages, and then deliver the rest to the Sheriff, and should make his Estreats accordingly; whereas many Clerks of the Peace put up the surplusage (if there be any) yea sometimes all into their own purse, and the Sheriff pays it to the King and never hath it. Wilk. 39.

7 H. 4. c. 3. And whereas in former times divers did lose issues, fines and amerciaments in the Kings Courts (at the suit of any party) and also issues and amerciaments in Enquests and Juries wherein they were impannelled betwixt party and party, whereupon the Bayliff, &c. which gathered the green wax did levy the same issues, fines, and amerciaments by Estreats in obscure and ambiguous words, not containing the sum lost, nor making mention of the cause of the loss, nor the day of the term, nor betwixt what parties, nor the nature of the writ in which the same issues, fines, and amerciaments were lost, so that the said Officers did levy the sum two or three times, and sometimes the double sum contained in their Estreats; for remedy whereof the Stat. made anno 7 H.4. c. 3. hath enacted, That the Clerks of the Estreats in the Courts or places where such issues and amerciaments shall be forfeited, shall make the rolls of the Estreats of such issues and amerciaments distinctly by express words of the cause of the loss or forfeiture, of the term, of the year, and the nature of the writ or action, and betwixt what parties such issues and amerciaments be or shall be lost, and that as well in the Kings suit, as in the suit of the party. *Estreats defective.* P. Estreats 2. *Le forme del Estreats.*

27 El. 7. P. Jurors 34. And the Sheriff must in his Warrants to his Bayliffs, express also the cause of the forfeiture, &c.

And now by the Statute of 27 El. cap.7. the Sheriff in his Return, is to set down the dwelling place of every Juror, and no extract of issues against any Juror shall be delivered out, or put in ure, without such addition as is put in the original pannel (or Tales) wherein such Juror shall be returned; and none of the Sheriffs Officers shall collect or gather any issues so extracted of any other person or persons than of such persons as by vertue of the said Estreats) is of right chargeable with the payments thereof, upon pain to forfeit 6 l. 13 s. 4 d. to the King and party grieved. *Ne levier sinon de droit person.*

CAP. 91.

Issues.

Note that these Issues returned and lost in respect of non-appearrance of the Defendant or persons impannelled, &c. shall be forfeit to the King, and (by the Estreats out of the Exchequer) shall be levied by the Sheriff to the Kings use. Br. distress 41. Fi. 59. b.

And with these issues, as well in these cases, as in any other case of a Distresse infinite, the land is chargeable into whose hand soever it come after. Finch. 353. as appeareth by that which followeth.

Sur que tiels issues serra servie per le Vic. &c.

Forfeit al Roy. *Sur que serr'.* *S I home soit impannell, & puis fait feoffment in fee de son terre uncore le terre serra lie al issues que il perder per default, en apres pendant cel brief,* Vavisor (12 H. 7.) *sed* Davers *&* Wood *contra: Mes per eux, lou home est distrein & puis alien son terre, cest terre serra charge, & liable in les mains le feoffee, des issues pendent le proces apres le feoffment, &c.* Br. Challenge 160. Vide Co. L. 102. b. 12 H. 7. 4. a.

Sur purchasor. *Sur issue in taile.* *Le heir in tail serra charge ove l'issues perde per son pere in son vie, & ceux issues serra levie sur le terre taile,* Br. Issues 15. 23.

Sur cestuy in Reversion. *Tenant pur vie est impannell sur Jurie, & perde issues & devie, le terre serra charge ove ceux issues, & ils serra levy sur le possession de cestuy in reversion.* Br. Issues 23. Dr. & St. 37, 38. Finch. 59.

Sur feme. *Home seisie in jure uxoris, est impannell, & perde issues, & devie, le terre serra charge ove ceux issues, & ils serra levie sur le possession del feme,* Br. Issues 23. Dr. & St. 38.

Successor. *Si issues sont retorne sur Evesque, &c. & puis il est remove, son successor serra charge del issues,* Br. Issues 25. Finch. 59.

Lessee. *Si home ad perde issues, & fait lease pur ans de son terre, & le Vic. retorne le lessor in issues, le vicount payer eux luy mesme: Et uncore le Vicount poit aver retorne le rent in issues: Mes il ne poit distrein le termor ou lessee durant le terme,* Br. Issues 5. 7 H. 6. f. 9.

Estr'. *Si home ad perde issues, & l'avers del estranger vient sur le terre, semble que le Vicount poit distrain ceux avers del estranger pur ceux issues, car le terre est charge del ceo: mes semble que le beasts distreine covient estre levant & couchant.* Vide Doct. & St. fol. 15. a. Fitz. N. B. 101. Br. Distr. 66. vide 5 H. 7. 1. moratur in lege. Br. dist. 41.

Joyntenant. *Si lun joyntenant perde issues, & le avers de son companion vient sur le terre, ceux avers ne serra distreine pur ceux issues: car l'avers de son companion fueront eins per droit, lou lavers del estranger fuer' la per tort.*

Et nota que touts les ters que Juror ad al temps del Venire fac. *serve sur luy, serra lies a ses issues, pur avantage le Roy: Et sil aver nul ter. al temps del* Venire fac. *servie, le Vic. que retorne luy in issues serra charge de pay tiel issues luy mesme: Et si tiel retorne fuit par son Predecessors, le prochein Vic. aver brief de Disceit vers son Predecessors.*

Et si le ter. le Juror soit recover vers luy, Ou que il aver ceo a terme d'auter vie, & que cestuy que vie est mort, donque le Vic. doit retorne ceo special matter, & issint Nihil habet. Fitz. Retorn. 13. hic antea cap. 78.

Mes le Vic. serra estopp. de retorne Nihil, *l'ou issues fuer. retorne per luy devant.*

CAP. 92.

Now concerning the choosing, and returning of Knights and Burgesses, of the Parliament; and for the levying of their wages: and what the Sheriff is to do therein.

Parliament. **By the Statute made, 5 R. 2. c. 4. every person (be he Archbishop, Bishop, Duke, Earl, Baron, Knight, Citizen, Burgess, or other) shall upon Summons come to the Parliament, &c. And if any Sheriff be negligent in making his returns of writs of the Parliament, or that he leave out of the said returns any Cities, or Boroughs, which be bound, and of ancient times were wont to come to the Parliament,** 5 R. 2.

liament, he shall be amerced, Or otherwise punished in manner as was accustomed to be done, &c. and it seemeth now by the Stat. made 23 H. 6. cap. 15. that the Sheriff for every such default, shall incur the pain contained in the Stat. made 8 H. 6. cap. 7. which is to pay 100 l. to the King, and to have one years imprisonment, &c.

After such time as the Sheriff hath received the Kings writ for summons of the Parliament, and election of the Knights, &c. the Sheriff (or his Under-sheriff) before his next County Court, is to make out his Warrants, to his Bayliffs of every Hundred, commanding them thereby, to summon or warn the Freeholders within their several Baylíwicks, to be at the next County, and there to make choice of their Knights, &c. Or else the Sheriff at some Quarter Sessions of the Peace, or some other general meeting of the County) (to be between the receipt of the Kings writ, and his next County) may give publique Notice thereof to the Freeholders. *Mes si le Vic. ne faire les Freeholders destre summon, ore sil ne done Notice semble que le Vic. sera puny come est avant dit.*

But there are divers mischiefs in the choosing of these Knights for the Parliament worthy of consideration.

After the Sheriff hath received the Kings writ for the choosing of these Knights, the Sheriff at his next County Court, and betwixt the hours of eight and nine before noon, is to proceed to the Election without Collusion upon the pains limited by the Statute.

Now first the Sheriff having received this writ, often concealeth it, and giveth either no warning, Summons, or Notice thereof (or at least very small Notice is given) to the Freeholders; so that very few can be present to attend the Election.

Next some few being present (and perhaps laboured of purpose to be there) the Election is hastily oftentimes made by these few (with more hast than good speed) And before that the rest of the Freeholders be come in, and the Sheriff by one of the clock is gone, and the Election made and so returned.

Thirdly, the extraordinary labouring of voices beforehand: whereas this Election should be free.

Again, where this labouring for voices is, divers are sent for of new to give their voices therein, who were neither present at the reading of the said writ, nor during the hours appointed, yea perhaps come not in till the next day.

7 H. 4. c. 15. By the Statute made 7 H. 4. c. 15. it was enacted, that the election of the Knights of Counties for the Parliament shall be made in the form following, sc. at the next County to be holden after the delivery of the Kings writ to the Sheriff, for the election of Knights of Parliament, proclamation shall be made by the Sheriff in the full County of the day and place of Parliament; and that all they which be there present (as well suters duly summoned for the same cause, as others) shall attend and in full County shall proceed to the election of their Knights for the same County for the Parliament freely and indifferently, notwithstanding any request or commandment to the contrary. And after that they be chosen, the names of the persons so chosen (be they present or absent) shall be written in an Indenture under the seals of all them that did chuse them, and tacked to the same writ of Parliament, which Indenture so sealed and tacked shall be holden for the Sheriffs return of the said writ, touching the Knights of the Shires; and in the writs of Parliament to be made hereafter this clause shall be put: Et electionem tuam in pleno comitatu tuo factam, distincte & aperte sub sigillo tuo & sigillis eorum qui electioni illi interfuerunt nobis in cancellariam nostram ad diem & locum in brevi contentum certifices indilate, Stat. 11 H. 4. 1. 6 H. 6. 4. 23 H. 6. 15. *Proclamac'.*

And after by the Statute made undecimo Henrici quarti capite primo, & 8 Hen. 6. cap. 7. it was further ordained, that if it be found by any Enquest before Justices of Assise that any Sheriff shall make any return contrary to the tenor of the former Statute made 7 H. 4. cap. 15. That then the said Sheriff should forfeit one hundred pound to the King, and have one years imprisonment without bail. And besides the Knights so unduely returned shall lose their wages, &c. of old accustomed: But yet the Sheriff and Knights may have their Traverse to such Enquests, &c. 6 H. 6. cap.4. & 8 H. 6. cap. 7. Also the Sheriff may be sued for perjury in the Star-Chamber for such false return. Dyer 167. hic cap 2.

11 H 4. 8 H 6. P. Parliament 4. Dyer 168.

Forf. le Vic.

Again, by the Statute made An. 23 H.6.cap.15. The Sheriff making any return contrary to any of these Statutes, shall forfeit another hundred pound to the other person chosen Knight for the same Shire, and not duely returned.

Queux persons serra eslie.

By the Statute made 1 H. 5. c. 1. & 8 Hen. 6. It was enacted, That none should be chosen Knight of the Shire, unless they be resiant within the Shire where they shall be chosen, the day of the date of the writ of the summons of the Parliament. And by another Statute made 23 Hen. 6. the Knights of the Shires for the Parliament, must be notable Knights, or such Esquires, or Gentlemen born, of the same County, as be able to be Knights: and no man may be such Knight, which stands in the degree of a Yeoman or under. 1 H. 5. 8 H. 6.

But no Sheriff during the time of his Sheriffwick, may be chosen Knight, or Burgess, of the Parliament (for the same County, or for any other County, as it seemeth.) See the form of the writ for the Chosing of Knights. Hic postea.

Also the Mayor of a City or Town Corporate, shall not be chosen to be Burgess, or Citizen, for the Parliament. Br. Parliament 7.

Persons attainted of Treason, or Felony, being chosen to be Knights, Citizens, or Burgesses of the Parliament, it seemeth the Sheriff ought to return them. See 1 H.7.fol.4. Br.Parliament 37. where divers Knights and Burgesses were attainted of Treason by a former Parliament, and by the opinion of all the Justices, those Knights and Burgesses were not to sit in the Parliament House, until the act of their Attainder were reverser, but after they might sit.

But yet a man attainted of Treason, or Felony, or outlawed, ought not to be chosen a Knight or a Burgess for the Parliament; For all Knights and Burgesses ought to be Legales homines.

Neither ought any man that is in Execution for debt, &c. be chosen a Knight or Burgess for the Parliament. Cromp. *Author. des Courts* 11. And yet such persons being chosen, it seemeth that the Sheriff ought to return their names.

Also the chosers of the Knights for the Parliament ought to be only of such persons as are resiant and dwelling within the said Shire the day of the date of the said writ, &c. 1 Hen. 5. 1. & 8 Hen. 6. 7.

Also the chosers of Burgesses for the Parliament, must be only of Citizens and Burgesses resiant, dwelling, and free, in the same Cities and Boroughs.

Esliors queux.

And yet if a man have two dwelling houses in several Shires, and a family or servants at each house; Or if a man keep his family in one County, City, or Borough, and abideth in service in another County, &c. in both these cases he may be a choser of the Knights of the County, or of the Citizens, or Burgesses, of the City or Burrough, where he keepeth his family; for he shall be said in Law to dwell in each of the said Counties, or Burroughs, &c. (But he must have 40 s. Freehold where he is in service, &c.) Cromp. *Author. des Courts* 3.

Also

Also a Freeman or Burgess of a Town Corporate, having 40 s. Freehold lands or tenements within the County (per annum) may be a chooser of the Knights of that Shire, &c. in which the Burrough where he dwelleth, is. And so one man may have a voice, and may be a chooser of the Knights or Burgesses, in two several places, &c.

Vide hic fol. 199. & scribe hic.

Note, that this election of Knights and Burgesses, may be by voices, or holding up hands, or by any other like way whereby it may be discerned who hath the greater number. Plow. 123. & 128. b. Bucklie's Case. *Electios coment.*

8 H. 6. cap. 7. 10 H. 6. c. 2. Also by the said Statutes made 8 H. 6. & 10 H. 6. It was Ordained, That no person shall be a chooser of the Knights for the Parliament, except he hath Freehold lands or tenements within the same County, to the value of forty shillings by the year at the least above all charges: And that such as have the greatest number of voices of them, which may spend forty shillings per annum as aforesaid, shall be returned Knights for the Parliament for the same County, by Indentures sealed between the Sheriff, and the said choosers: and the Sheriff hath power (given to him by the same Statute of 8 H. 6. 7.) to examine upon oath every chooser, how much he may expend by the year, if he doubteth thereof. *Esliors jurus.*

And so the Sheriff is here made a Judge in this Case, &c. to examine and judge of the ability of these Choosers of the Knights for the Parliament. But for that no person shall be a Chooser of the Knights for the Parliament, except he hath Freehold lands or tenements to the value of forty shillings by the year, above all charges, &c. To avoid many ambiguities and doubts which have arisen concerning these words, Lands or Tenements, you must understand that these words are thus to be taken or construed.

First, he that hath no other Freehold (or Inheritance) but advowsons of Churches, though they be of the value of 40 s. (or 40 l.) by the year, yet thereby he hath no such sufficiency, nor such Freehold-land or Tenements, as that thereby he may be a Chooser of the Knights of the Parliament, &c.

He which hath no other Freehold than Common of Pasture, though that be to the value of 40 s. per annum, yet he may be no Chooser: But he which hath a Freehold house or lands, of the yearly value of 30 s. and besides hath thereto belonging a Common of pasture appendant, to the yearly value of 20 s. he may be a Chooser, &c.

Otherwise it is, if his house be a new erected Tenement, or erected within the time of memory; for that Common Appendant must be by prescription; And therefore except such house be of the yearly value of 40 s. besides the Common, it enableth him not.

If a man have a Freehold Estate of Lands or Tenements in the right of his wife, or *pur terme de auter vie*, of the yearly value of 40 s. it is sufficient.

And yet if after the Return the Land be evicted, or that the wife, or *cestuy que vie* do die, he may be challenged. Co. L. 272. b.

If a man hath a free Warren of Coneys, the which Communibus Annis is worth 40 s. per annum, this is sufficient Freehold, &c.

If a man maketh 40 s. by the year (Communibus Annis) of his Wood-sales, Cole-mines, Tythes impropriate, or the like, being his Freehold, these are sufficient, &c.

But if A. hath Lands to the value of 40 l. per annum, and letteth the same out to another for life, reserving no Rent, or but 20 s. or 30 s. Rent

Rent per annum, this seemeth not to be sufficient Freehold for A. during the term, &c. to give his Vote.

Yet if he letteth such his Lands to another but for years (though for divers years) reserving only 20 s. or 30 s. Rent per annum, (Or absque aliquo reddendo) during the said years, yet here he may be a Chooser, &c. in regard of the Freehold in him.

If Lands be letten for years, the remainder to A. in Fee-simple, or in Fee-tail, here A. may be a Chooser, &c. for the Freehold which is in him, if the Lands be worth 40 s. per annum.

If a man hath 40 s. Rent per annum, Or an Annuity of 40 s. per annum issuing out of Lands, during his life, this is sufficient.

Note, that by the Common Law, all Freemen of England, had a voice in the Election of these Knights, within the Counties where they dwelt: But now by these Statutes of 8 H. 6. & 10 H. 6. they are restrained to such as have 40 s. Freehold per annum within the County, &c.

Again, it seemeth they must be such Freeholders, as do contribute to the wages of the Knights of the Shire; Or else such as are suters to the County Court.

Clergy-men, for their Spiritual livings, are holden to have good voices in the Election of these Knights.

Fellows of Houses or Colledges in Universities, are holden to have no voices (in this Election of Knights) for or by reason of their Chambers or other availes, &c. in their Colledges.

Gentlemen of the Houses of Court, or Chancery, are holden to have no voices herein, by reason of their Chambers there.

Note, that the Election of Knights for the Parliament, ought to be made by the Sheriff in his full County; and between the hours of eight and eleven before noon, without collusion, upon the pains above limited, and this by the Statute, 23 H. cap. 15.

And all such as be Choosers of these Knights must be present in the County Court, between the said hours of eight and eleven.

Quære if they ought not to be present at the reading of the said writ of the Summons of the Parliament.

If the Election of these Knights be made by the Freeholders in the full County between the hours of eight and eleven as aforesaid, although the Sheriff shall make his Return, and seal his Indentures afterwards, and in another place, yet it is good.

So then Sheriffs ought to make due Election of Knights for the Parliament, by the Freeholders of the County, and in open County Court, and between eight and eleven of the Clock in the forenoon, And ought to return for Knights of the Parliament, such persons as are so chosen by the greater number of Freeholders (dwelling within the said County) which may expend forty shilling per annum, at the least within the same County, upon the pains above limited: See Dyer fol. 60. where Bronker Sheriff of Wiltshire was sued in the Star-Chamber upon an Information of perjury at the Kings suit, for a false return made of Sir John Thin to be Knight of the Parliament for the said County, Where in truth, Penruddocke was chosen by the greater number of the Freeholders in the said County, in deceit of the County, and of the whole Realm.

Note, that such only are to be Knights of the Parliament, as shall be

be chosen by the greater number of the Freeholders present in Court as aforesaid; And therefore if the Sheriff shall Return any other, upon complaint thereof made to the House of Commons, they, after Examination and due proof hereof, may and will cause the Sheriff to amend his Return, &c. and besides they will punish the Sheriff: Or may cause a new writ to be sent out, and so a new Election to be made, where they shall see cause.

The Citizens and Burgesses of Burroughs, ought to be chosen of persons, resiant, dwelling, and free, in the same Cities and Burroughs, and of none others, 1 H. 5. cap. 1. tamen aliter in usu.

23 H. 6. c. 15. Cromp. 208. P. Parl. 5. Also every Sheriff after the receit of the Kings writ for summoning of the Parliament for the Election of Knights of the Parliament, ought forthwith to make out his Warrants under the seal of his office to every Mayor, and Bayliffs of Cities and Burroughs, within the County, reciting in his said Warrants the writ of Parliament, commanding them thereby to chuse Citizens and Burgesses to come to the Parliament: (sc. if it be a City to chuse Citizens for the same City by Citizens; and if it be a Burrough to chuse Burgesses by Burgesses or Free men of the same Burrough.) And those Mayors and Bayliffs must make a lawful return of that Precept to the Sheriff, by Indentures made between them and the Sheriff of their Election, and of their names which are elected. And the Sheriff must set his hand and seal of Office to the one part of the Indentures, and then deliver it to the Mayor, or Burgesses, or Citizens to be kept, And to the other part the Mayor, or Citizens, or Burgesses must set their hands and seals, and deliver it as their deeds to the Sheriff, to be certified and returned by him, with the writ of Summons, to the Clerk of the Crown (who will have 4 s. for his fees, for every Indenture.) And the Sheriff ought to make a good and true Return of all this (sc. of the said writ, and of every such return to him made by the Mayors, &c.) upon the pains hereunder limitted. Burgesses.

23 H. 6. c. 15. Cromp. 207. Note, that if the Sheriff shall do any thing contrary to this Statute of 23 H. 6. 15. (concerning the election of Burgesses, or due returning of them.) Or of any other Statute made for the election of Knights to come to the Parliament, he shall incur the pain of one hundred pound to the King, and imprisonment for one year without bail; And further shall pay to the party so chosen, Knight, Citizen or Burgess, and not by him duly returned (or to any other person, who in default of such Knight, Citizen or Burgess, will sue) one other hundred pounds, to be recovered by action of debt, against the said Sheriff, his Executors or Administrators.

Mes ils doient commencer lour action deins 3. mois apres le dit Parliament commence; Et sil ne issint fait, ou ceo ne prosecute ove effect sans fraude ascun, auter que voila avera le suite pur le dit 100 l. *come le Chivaler averoit; Et Costs de suite auxi serra agard al dit Chivaler, ou al auter que suera in son default.* 23 H. 6. cap. 15. Vide Dyer 113. & Plow. 118.

Si ascun Mayor ou Bayliff fait untrue Retorne (al Vic. ils forfeiter 40 l. *al Roy, & al party,* (sc. *al Citizen, ou Burgess nient retorne) auter* 40 l. Stat. 23 H. 6. cap. 15.

Auxi si un Burgess soit apres fait Mayor d'un ville; Ou si Chivaler ou Burgess de Parliament soit malidie, ceux sont sufficient causes de elect novels; Et al Parliament tenus per Adjournment Anno 38 H. 8. *ils fairont accordant per brief le Roy & ceo fuit admit. & accept.* Br. Parliament 7.

Now

How the names of the said Knights shall be returned into the Chancery by Indenture sealed between the Sheriff and the Chusers of the Knights for the Parliament, in manner following.

The form of the Indenture for the Knights of Parliament.

HÆc Indentura fact. in pleno Comitat. Cantebr. tent. apud castrum Cantebr. die Jovis 30. Maii Anno Regni, &c. (**reciting the Kings Stile at large**) inter A. B. Milit. Vic. comitat. prædict. ex una parte, & *J. Cage* Milit. *T. Pal.* Armig. & M. D. R. T. & J. B. Armig. &c. & multis aliis personis Comit. prædict. & elector. duorum milit. ad Parliamentum in breve huic Indenturæ consut' specificat. ex altera parte, qui ut major pars totius comitatus prædict. tunc ibidem existens, Jurat. & examinat', secundum vim formam & effectum diversorum statutorum inde ædit. & provisor': eligerunt *Ed. Peton* milit. & Bar. & *Johannem Cutts* milit. infra comitat. præd. commorantes gladiis cinct. milites, habiles, & magis idoneos, & discret'; dantes & concedentes præd. duobus milit. plenam & sufficientem potestatem pro se, & tot. communit. comitatus præd. ad faciend. & consentiend. hiis quæ ad Parliament. in dict. brevi content. de communi consil. Regni dicti Domini Regis nunc Angliæ, contingerit ordinari, super negotiis in dicto brevi spec. In cujus rei testimonium uni parti hujus Indent. penes dictum Dominum Regem remanentis partes præd. sigilla sua apposuerunt, alteri vero parti ejusdem Indent. præd. Vic. sigill' suum apposuit, datum die Anno & loco supradict. &c.

The form of the Indenture for the Citizens or Burgesses.

THis Indenture made, &c. (reciting the day, and year, and the Kings Stile at large, as before, &c.) Witnesseth, That by vertue of a Warrant to me directed from Sir *A. B.* Knight, Sheriff of the County of *Cambridge*, for the electing and chusing of two Burgesses, men of good understanding, wit, knowledge, and discretion, for causes concerning the weal publick of the Realm, to be at his Majesties High Court of Parliament to be holden at his Highness City of *Westminster* the day of next coming, I Mayor of the Borough or Town of *Cambridge*, with the whole assent and consent of the rest of the Burgesses there, have made choice and election of of Esquire, and of of Esquire, to be Burgesses for our said Borough of *Cambridge*, to attend at the said Parliament, according to the tenor of the said Warrant to me directed in that behalf. In witness whereof I have to these presents set our common Seal of our said Borough, the day and year first above written.

This Court of Parliament is the highest Court of England, wherein the King himself sitteth in person, and cometh thither at the beginning, and ending, and at other times at his pleasure.

Every Lord of the Parliament (as well Lords Spiritual as Temporal) is to be summoned severally, by the Kings writ, to come to the Parliament, at a certain day and place set down in the writ.

The form of which Writ is as followeth.

C*Arolus* Dei gratia, &c. charissimo consanguineo nostro *Johan.* Comit. Essex salutem. Quia de advisamento & assensu Consilii nostri pro quibusdam arduis & urgentibus negotiis, nos, statum, & defensionem Regni nostri *Angliæ*, & Ecclesiæ *Anglicanæ* concernent' quoddam Parliamentum nostrum apud Civitatem nostram *Westmonasterium* 12. die *Febr.* proxim. futur. teneri ordinavimus, Et ibidem vobiscum, ac cum Prælatis, Magnatibus, & Proceribus dicti Regni nostri Colloquium habere, vobis sub fide & ligeanciis quibus nobis tenemini firmiter injungend' mandamus, quod considerat' dictorum negotiorum arduitate & periculis imminentibus, Cessante excusatione quacumque dict. die & loco personaliter intersitis nobiscum, ac cum Prælatis, Magnatibus, & Proceribus prædictis, super dictis negotiis tractatur' vestrumque Consilium impensur' Et hoc sicut nos & honorem nostrum, ac salvationem & defensionem Regni & Ecclesiæ prædictorum, Expeditionemque dictorum negotiorum diligitis, Nullatenus omittatis. Teste meipso apud *Westmon.* die Novemb. anno Regni nostri *Angl.* &c.

The like Writ is to be made to every Bishop, Mutatis mutandis.

Also Writs are directed to the Sheriff of every Shire, for the chosing of Knights, and Burgesses, of the Parliament.

The form of the Writ is as followeth.

C*Arolus* Dei gratia, &c. Vicecom. Com. *Cantabr.* salutem. Quia de advisamento & assensu Consilii nostri pro quibusdam arduis & urgentibus negotiis, nos, statum, & defensionem Regni nostri *Angliæ* & Ecclesiæ *Anglicanæ* concernent' quoddam Parliamentum nostrum apud Civitatem nostram *Westmon.* 12. die *Febr.* proxim' futurum teneri Ordinavimus, Et ibidem cum Prælatis, Magnatibus, & Proceribus dicti Regni nostri colloquium habere, Tibi præcipimus firmiter injungentes quod facta Proclamatione in proximo Comitatu tuo post receptionem hujus brevis nostri tenend' de die & loco prædict. duos milites gladiis cinctos, de magis idoneis & discretis Comitatus prædicti, Et de qualibet Civitate Comitat' illius duos Cives, Et de quolibet Burgo duos Burgenses de discretioribus & magis sufficientibus libere & indifferenter per illos qui proclam' hujusmodi interfuer' juxta formam Statutorum inde edit. & provis. Eligi facias, Et nomina eorundem Militum, Civium, & Burgensium, sic electorum, in quibusdam Indentur. inter te & illos qui hujusmodi Electioni interfuerint inde conficiend', sive hujusmodi Electi præsentes fuerint vel absentes, inseri: Eosque ad dict. diem & locum Venire fac. Ita quod iidem Milites plenam & sufficientem potestatem pro se & Communitate Comitatus præd. Ac dictos Cives & Burgenses, pro se & Communitat. Civitatum & Burgorum præd. divisim ab ipsis habeant, ad faciend' & consentiend' hiis quæ tunc ibidem de Communi Consilio dicti Regni nostri (Deo favente) contigerint Ordinari super negotiis antedictis, Ita quod pro defectu potestatis hujusmodi, seu propter improvidam Electionem Militum, Civium, & Burgensium prædictor', dicta negotia infecta non remaneant quovismodo. Nolumus autem quod tu, nec aliquis alius Vicecomes dicti Regni nostri aliqualiter sit Electus. Et Electionem illam in pleno Comitatu factam distincte & aperte sub Sigillo tuo, & Sigillis eorum

qui Electioni illi interfuerint nobis in Cancellariam nostram ad dict. diem & locum certifices indilate. Remittens nobis alteram partem Indenturar. prædictarum præsentibus Consuet' una cum hoc breve. Teste meipso apud *Westm.* die *Novembr.* Anno Regni nostri *Angl. &c.*

The forms of the Sheriffs Return upon this Writ, As also of the Indentures between the Sheriff and the Freeholders, And of the Indentures between the Sheriff and Burgesses. See hic Cap. 57.

And note, that where the aforesaid Writ for summoning of the Parliament hath in it these words, De qualibet Civitate Comitatus illius duos Cives, that is to be intended where the City is no County in it self. For if it be a County of it self (as London, Norwich, and such) then the Writ shall be directed to them, as it shall be to the Sheriffs of other Counties. Cromp. author. des Courts fol. 3.

And so every City which is a County in it self, shall have two Knights or Citizens, besides such Knights as are for the County in which the City is: As the City of Norwich shall have two Knights or Citizens, and the County of Norff. (for the same County) shall also have two Knights, & sic de similibus. Cromp. author. des Courts 28.

But for that (by the words of the former Writ) the Sheriff is to cause to be chosen, and is to Return de qualibet Civitate Com. duos Cives, & de quolibet Burgo duos Burgenses, &c. And again, for that by the aforesaid Stat. of 5 R. 2. 4. & 8 H. 6. & 23. it seems to be so penal to them, if any Sheriff shall leave out of his said Returns (of Writs of the Parliament) any Cities or Burroughs, which be bound and of ancient times were wont to come to the Parliament, I have therefore here inserted the names of all the Counties, Cities, Burroughs, and Ports, which do send Knights, Citizens, Burgesses, and Barons, to the Parliament of England, as I find them in Mr. Crompton.

Bedfordshire.	Knights for the County		2
	The Burrough of Bedford,	Burgesses	2
Berkshire.	Knights for the County		2
	The Burrough of New-Windesor	Burg.	2
	The Burrough of Reading		2
	The Burrough of Wallingford		2
	The Burrough of Abington		2
Buckingham-shire.	Knights for the County		2
	The Burrough of Buckingham	Burg.	2
	The Burrough of Wickham		2
	The Burrough of Alesbury		2
Cambridge-shire.	Knights for the County		2
	For the University of Cambridge	Burg.	2
	For the City or Burrough of Cambridge		2

County		Place		Number
Cornwall.	Knights for the County			2
	The Burrough of	Dunhivid *alias*	Burg.	
		Launceston		2
		Leskard		2
		Lest Withiel		2
		Truro		2
		Bodmin		2
		Helston		2
		Saltash		2
		Gamelford		2
		Port Pigham *alias*		
		Westlow.		2
		Crampound		2
		Eastlow		2
		Penryn		2
		Tregonie		2
		Trevena & Bossennye		2
		Saint Ives		2
		Fowey		2
		St. Germans		2
		St. Michael		2
		St. Mawes		2
		Newport		2
		Kellington		2
Chester shire.	Knights for the County			2
	The City of Chester		Citizens	2
Cumberland-shire.	Knights for the County			2
	The City of Carlile		Citizens	2
	The Burrough of Cockermouth		Burg.	2
Darbyshire.	Knights of the County			2
	The Burrough of Darby		Burg.	2
Devonshire.	Knights			2
	The City of Excester		Citizens	2
	The Burrough of	Honyton	Burg.	2
		Oakehampton		2
		Totnes		2
		Plymouth		2
		Barnestable		2
		Plympton		2
		Tavistock		2
		Darmouth Clifton and Hardness		2
		Beralston		2
		Tyverton		2
		Ashburton		2
Dorsetshire.	Knights			2
	The Burrough of	Poole	Burg.	2
		Dorchester		2
		Lyme Regis		2
		Melcombe Regis		2
		Waymouth		2
		Bridport		2
		Shaftesbury		2
		Warham		2
		Corfe-Castle		2

Durham.	Knights		2
	City of Durham	Citizens	2
Essex.	Knights		2
	The Burroughs of Colchester	Burgesses	2
	The Burroughs of Malden	Burgesses	2
	The Burroughs of Harwich	Burgesses	2
Glocestershire.	Knights		2
	The City of Gloucester	Citizens	2
	The Burrough of Cirencester	Burg.	2
	The Burrough of Tewksbury	Burg.	2
Huntingdonshire.	Knights		2
	The Burrough of Huntingdon	Burg.	2
Hertfordshire.	Knights		2
	The Burrough of S. Albans	Burg.	2
	The Burrough of Hertford	Burg.	2
Herefordshire.	Knights		2
	The City of Hereford	Citizens	2
	The Burrough of Lemster	Burg.	2
	The Burrough of Weobley	Burg.	2
Kent.	Knights		2
	The City of Canterbury	Citizens	2
	The City of Rochester	Citizens	2
	The Burrough of Maydeston	Burg.	2
	The Burrough of Queenborow	Burg.	2
Lancashire.	Knights 2		
	The Burrough of Lancaster	Burg.	2
	The Burrough of Preston	Burg.	2
	The Burrough of Liverpoole	Burg.	2
	The Burrough of Newton	Burg.	2
	The Burrough of Wigan	Burg.	2
	The Burrough of Clitheroe	Burg.	2
Leicestershire.	Knights		2
	The Burrough of Leicester	Burgesses	2
Lincolnshire.	Knights		2
	The City of Lincoln	Citizens	2
	The Burrough of Boston	Burg.	2
	The Burrough of Great Grimsby	Burg.	2
	The Burrough of Stamford	Burg.	2
	The Burrough of Grantham	Burg.	2
Middlesex.	Knights		2
	The City of London	Citizens	4
	The City of Westminster	Citizens	2
Monmouth.	Knights		2
	The Burrough of Monmouth	Burg.	2
Northamptonshire.	Knights		2
	The City of Peterborough	Citizens	2
	The Burrough of Northampton	Burg.	2
	The Burrough of Brackley	Burg.	2
	The Burrough of Higham ferreis	Burg.	1
Notinghamshire.	Knights		2
	The Burrough of Nottingham	Burg.	2
	The Burrough of Estreateford	Burg.	2
	The Burrough of Newark	Burg.	2

Nor-

Norfolk.	Knights for the County			2
	The City of Norwich		Citizens	2
	The Burrough of	Lynn Regis	Burg.	2
		gr. Yarmouth		2
		Thetford		2
		Castle Riseing		2
Northumberland.	Knights			2
	The Burrough of	New Castle upon Tyne	Burg.	2
		Morpeth		2
		Barwick upon Tweed		2
Oxfordshire.	Knights			2
	The City of Oxford		Citizens	2
	The University of Oxford			2
	The Burrough of	Banbury	Burg.	1
		Woodstock		2
Rutlandshire.	Knights.			2
Surry.	Knights			2
	The Burrough of	Southwark	Burg.	2
		Blechingly		2
		Rigate		2
		Gilford		2
		Gatton		2
		Haslemore		2
Staffordshire.	Knights			2
	The City of Lichfield			2
	The Burrough of	Stafford	Burg.	2
		New-Castle under Lyne		2
		Tamworth		2
Salop.	Knights			2
	The Burrough of	Salop	Burg.	2
		Bridgnorth		2
		Ludlow		2
		Wenlow		2
		Bishops-Castle		2
Southampton.	Knights			2
	The City of Winton		Citizens	2
	The Burrough of	Southampton	Burg.	2
		Portsmouth		2
		Petersfeild		2
		Stockebridge		2
		Christ-Church		2
		Yarmouth		2
		Newport *alias* Medona		2
		Newton		2
		Whitchurch		2
		Limingston		2
		Andover		2
Somersetshire.	Knights			2
	The City of	Bristoll	Citizens	2
		Bathe		2
		Wells		2
	The Burrough of	Taunton	Burg.	2
		Bridgewater		2
		Minehead		2
		Ilcester		2
		Milburn Port		2

Suffolk.

County		Place		Members
Suffolk.	Knights for the County			2
	The Burrough of	Ipswich	Burg.	2
		Dunwich		2
		Orford		2
		Alburough		2
		Sudbury		2
		Eye		2
		St. Edmonds-Bury		2
Sussex.	Knights			2
	The City of Chichester		Citizens	2
	The Burrough of	Horsham	Burg.	2
		Midhurst		2
		Lewes		2
		Shoreham		2
		Brember		2
		Steining		2
		East Grenested		2
		Arundell		2
Warwick.	Knights			2
	The City of Coventry.		Citizens	2
	The Burrough of Warwick.		Burg.	2
Westmerland.	Knights			2
	The Burrough of Apulbie.		Burg.	2
Wiltshire.	Knights			2
	The City of New-Sarum.		Citizens	2
	The Burrough of	Wilton	Burg.	2
		Downton		2
		Hindon		2
		Westburye		2
		Heftsburye		2
		Calne		2
		Devyses		2
		Chippenham		2
		Malmesbury		2
		Cricklade		2
		Bodwin		2
		Lugdersale		2
		Old-Sarum		2
		Wotton Basset		2
		Malborough		2
Worcester.	Knights			2
	The City of Worcester.		Citizens	2
	The Burrough of	Droitwich	Burg.	2
		Evisham		2
		Bewdley		2

York.

Yorkshire.

Knights of the County			2
The City of York.		Citizens	2
The Burrough of	Kingston upon Hull	Burg.	2
	Knaresborough		2
	Scarborough		2
	Rippon		2
	Heydon		2
	Burrowbridge		2
	Thuske		2
	Alborough		2
	Beverley		2
	Richmond		2
	Malton		2
	Northalerton		2
	Pontefract		2

Barons of the Cinque Ports

Hastings	Burg.	2	Dover	Burg.	2
Winchelsey		2	Sandwich		2
Rey		2	Hithe		2
Rummey		2	Seaford		2

Wales.

1.	Anglesey.	Knights	1
	The Burrough of Beawmares.	Burg.	1
2.	Carmarthen.	Knights	1
	The Burrough of Carmarthen.	Burg.	1
3.	Carnarvon.	Knights	1
	The Burrough of Carnarvon.	Burg.	1
4.	Cardigan.	Knights	1
	The Burrough of Cardigan.	Burg.	1
5.	Denbigh.	Knights	1
	The Burrough of Denbigh.	Burg.	1
6.	Flynt.	Knights	1
	The Burrough of Flint.	Burg.	1
7.	Glamorgan.	Knights	1
	The Burrough of Cardiff.	Burg.	1
8.	Mount-gomery.	Knights	1
	The Burrough of Mount-gomery.	Burg.	2
9.	Pembrooke.	Knights	1
	The Burrough of Pembroke.	Burg.	1
10.	Merioneth.	Knights	1
	The Burrough of Haverfordwest.	Burg.	1
11.	Radnor.	Knights	1
	The Burrough of Radnor.	Burg.	1
12.	Brecon.	Knights	1
	The Burrough of Brecon.	Burg.	1

The total Number of the Nether House of Parliament.

sc.	Knights	92
	Citizens	48
	Burgesses	378
	Barons of the Cin. P.	16
	Total	534

Also

Also Sheriffs when they have received (letters or) writs for the levying of expences of the Knights of the Parliament, at the next County Court, after the receit of these letters, ought to make open Proclamation that the Coroners, and every chief Constable of the said County, and Bayliffs of every Hundred of the same County, and also all other which will be at the assessing of the wages of the Knights of the Shire, shall be at the next County there to be holden to assess the said wages: and the Sheriff, Under-sheriff, Coroners, and Constables, or Bayliffs of Hundreds ought to be there in person to assess the wages, upon pain of forty shillings to very one that maketh default; And then the Sheriff or Under-sheriff, in the presence of them that shall come, and of the Suiters of the same County, (then being there in the full County) well and duly ought to assess every Hundred to that assessable, at a certain sum by it self, and after they ought to assess every Village to that assessable, within the Hundreds, with a certain sum, and if they shall make any assessment otherwise, they shall forfeit for every default twenty pound to the King; and besides ten pound to any man which will sue in this case, with treble damages, &c. P. Parl. 12. 23 H. 6. c. 11. Cromp. 207.

The Knights fees or wages, &c.

Queux persons attender.

But every Hundred must be so assessed by the Sheriff, &c. (to the payment of the said wages) so that the whole sum of all the Hundreds do not exceed the sum which shall be due to the said Knights: and every Village must be so assessed, so that the whole sum of all the Towns within any of the said Hundreds, do not exceed the sum assessed upon the Hundred of which they be, upon the pains before limited. Ibid.

It seemeth that every Knight of the Shire is to have the allowance of 13 s. 4 d. by the day, to be paid by the County (as aforesaid) whereof he is Knight, Powell fol. 223.

But Barons of the Cinque Ports, and Burgesses, have not used to have above 10 s. a piece by the day. Powell ibidem.

Also if any Sheriff, Under-sheriff, Bayliff, or other Officers shall levy (for the cause aforesaid) more money of any Village, than that whereunto they be assessed, they shall forfeit (for every default) to the King twenty pound, and ten pound to any other which will sue for the same, besides treble damages for the cost of their suits. 23 H. 6. c. 11.

The Sheriff well and duly shall levy the monies so assessed upon the Villages as speedily as they well may after the said assessing; and the same shall deliver to the said Knights according to the said writs upon the penalties aforesaid; And the Sheriff may distrein for the same F. Avow. 260. Ibid.

But such expences of Knights shall not be assessed nor levied for any other Villages, seigniories or places, but of such whereof it hath been anciently levied. See 8 R. 2. Fitz. Avow. 260. Ibid. Register 191, 192.

Also (it seemeth) that the Freeholders and Tenants of such Lords, &c. as come to the Parliament, are not to be assessed to such charges for their tenancies or lands holden of such Lords, except they have been so charged time out of mind. And yet the Statute Anno 12 R. 2. cap. 12. if any other Lord, or any other man Spiritual or Temporal, hath purchased any lands, tenements, or other possessions that were wont to be contributary to such expences, before the time of their said purchase, the said lands and tenements, and the tenants of the same, shall be contributory to the said expences, in such manner as the said lands, &c. were wont to be before the said purchase. Vide 8 R. 2. Fitz Avowry 260. & 11 H. 4. fol. 2. 8 R. 2. Avowry 260. 12 R. 2.

But Copiholders (or Villains) shall not be contributory to the said wages, or expences. Br. Parliament 96. Register. 261. Fitz. 228. f.

Also the free tenants, and tenants at will in *Ancient Demesne*, as

alſo the Lords ought to be acquitted of payments to the expences of the Knights of the Parliament. Fitz. 14. e. Br. Aun. Dem. 43. & Priviledg. 56. & Co 9. part Preface.

Alſo thoſe Burroughs which do find Burgeſſes to the Parliament, ſhall not pay nor contribute to the wages or expences of the Knights of the Shire, Except it be by Preſcription. 11 H. 4. fol. 2.

34 H. 8. c. 24. Note, that by the Statute made Anno 34 H. 8. c. 24. the County of Cambridge, and the Inhabitants of the ſame, are diſcharged of all ſuch ſums of money, to be levied or paid for the fees of their Knights of the Parliament for the ſaid County: And the Mannor of Burlewas lying in Madingly in the ſaid County of Cambridge, is charged with the payment of 10 l. yearly for ever, at the Feaſt of Saint Michael the Archangel, for the ſaid fees or wages of Knights of the ſaid Shire or County: And the Sheriff, and two Knights of the Parliament of the ſaid County, are incorporated for to ſue for the ſame: And the ſaid Knights, and the ſurvivor of them, ſhall have and receive the ſame to their own uſe towards their charges: And if both the Knights of the ſaid Shire be dead, then the Sheriff of the ſaid Shire for the time being, ſhall have the ſame rent of 10 l. to his own uſe, until other Knights ſhall be choſen for the Parliament, &c. Cambridgeſhire

Note, that for the fees or wages of the Knights for the Parliament, the Sheriff may diſtrain the goods of the Town, or of any of the Town, ſc. may diſtrain the whole Herd belonging to the Town, or the cattel or other goods of any particular perſon of that Town: 11 H. 4. 2. Br. Diſtreſſ 95. & 8 R. 2. Fitz. Avowry 206.

Mes quant le viscount (ou auter Officer) vient pur diſtreiner, & vers les avers, ſi l'owner des avers ou auter perſon eux chaſe hors del ville, ſemble le viscount ou Officer ne poet eux diſtrein in auter ville. Vide 16 E. 4. 10. Br. Diſtr. 51.

Note alſo, that the Sheriff, or other Officer, may ſell the diſtreſs taken by them for the fees, wages, or expences of the Knights of the Parliament: ſee hic antea tit. The Kings Debts.

For Knights to be choſen for the 12 Counties of Wales, and Burgeſſes for every Burrough-Town, and the Returning of them by their ſeveral Sheriffs, and for their Knights fees, and Burgeſſes fees. Vide Stat 27 H. 8. cap. 26.

The Sheriff of every County there, ſhall gather the wages of the Knights, &c. And the Mayor, and other head-Officers, of Cities and Burroughs there, ſhall gather their wages of the Burgeſſes, &c. 35 H. 8. c. 11.

And for Knights to be choſen for the County Palatine of Cheſter, and Burgeſſes for the City of Cheſter: And the Returning of them by the Sheriff there, and for their wages or fees, &c. Vide Stat. 34 H. 8. c. 13.

CAP. 93.

The Sheriffs duty in executing the Writ of Rediſſeiſin.

Merton. 20 H. 3. c. 3. Fitz. 188. y. & 190. a. Where a man hath recovered any lands, rent ſervice, rent charge, or rent ſeck, common, or other tenements (by Aſſiſe of Novel diſſeiſin, Mortdanceſter, Juris Utrum, vide Co. L. 254. or other action, which paſs by Juries and Verdicts, or by confeſſion of the diſſeiſor, or by any other manner. Co. L. 154.) and is put in poſſeſſion thereof Rediſſeiſin.

 by

by the Sheriff (by writ de habere facias ſeiſinam) and after the ſame Plaintiff is rediſſeiſed of the ſame lands, rents, commons, or other tenements by him by whom he was formerly diſſeiſed, then the diſſeiſee ſhall have a writ * to the Sheriff, &c. by which the Sheriff ſhall be commanded, that he, taking with him the Keepers of the Pleas of the Kings Crown, ſc. (the Coroners) and other Knights, in his proper perſon ſhall go unto the lands or tenements, paſture, or grounds whereof the plaint was made, and that he make before them (by the firſt Jurors, and other Neighbours and lawful men) diligent inquiſition thereof, and if they find him diſſeiſed again (as aforeſaid) that then the Sheriff ſhall forthwith take ſuch diſſeiſor, and commit him or them to priſon, there to remain until the King ſhall diſcharge them, &c. And that upon a fine to be made to the King for the offence.

* Sc. Breve de Rediſſeiſin.

Inquiſition.

Impriſon.

But the Sheriff ſhall execute no ſuch plaint (or thing) without the Kings ſpecial Writ. 20 H. 3. c. 3.

Note, that the writ de Rediſſeiſin, is, Scire facias præfatum S. (the diſſeiſor) & D. qui terram illam nunc tenet, quod Inquiſitioni interſint, &c. And therefore the Sheriff (upon this writ) ought to ſummon the ſaid parties (ſc. the diſſeiſor, and the *terr tenant*) to be before him at the time when he maketh this Inquiry; but the ſummoning of the *terr tenant*, ſeemeth only to be, to give in evidence, &c.

And for that by the former Stat. of Merton made 20 H. 3. there was no remedy given or provided in caſe where the Sheriff had delivered the party without the Kings Licence, &c. therefore by another Stat. made at Marlebr. Anno 52 H. 3. it was ordained, that if the Sheriff ſhall deliver any ſuch perſons as are convicted of Rediſſeiſin, without the ſpecial commandment of the King (or Judgment, &c. of the Kings Court) the Sheriff ſhall be grievouſly amerced, and beſides, the parties ſo delivered ſhall be grievouſly puniſhed for their wrong or treſpaſs. 52 H. 3. c. 8. Fitz. 189. c. Dyer 61. 2.

Alſo by the Statute of Weſtm. 2. (made anno 13 E. 1. cap. 26.) the Rediſſeiſors ſhall not be repleviable by the Common writ, ſc. they ſhall not be delivered or let go out of priſon (by the Sheriff, &c.) by the Common Writ, de Homine Repleg. nor by any other writ, nor without writ, but ſhall remain in priſon until he be diſcharged by the Kings ſpecial commandment, which muſt be in manner following, viz. Where a man is convicted of Rediſſeiſin, he ought to make his fine in the Chancery, and from thence to have a writ directed to the Sheriff, making mention that he hath made his fine with the King for the Rediſſeiſin, and commanding the Sheriff to inlarge him, &c. And this was the opinion of the Court (except Inglefield) anno 18 H. 8. fol. 1. for that the words of the Statute of Marlebr. cap. 8. be, that ſuch offendors ſhall not be delivered without the Kings ſpecial commandment, &c. And this ſpecial commandment cannot be but out of Chancery: But in the ſame caſe Inglefield held, that the Juſtices of the Common Pleas, having the record before them (by a Certiorare) that the Juſtices there had power to aſſeſs the fine, and to award ſuch a ſpecial writ out of that Court to the Sheriff, to let the priſoner at large: And that ſuch a writ iſſuing out of that Court was the ſpecial commandment of the King; and that the meaning of the Statute was only to prohibit the Sheriff to aſſeſs the fine, and not to prohibit the Juſtices, who are Juſtices of Record ſo to do, Ideo quære. 8 H. 8. 81. f. 1.

Special commandment le Roy.

But note, that the Sheriff is not to diſpute the authority of the Court, &c. See Co. 6. 54. & hic antea fol.

And yet, See Fitz. 190. f. if a man be convicted before the Sheriff of Rediſſeiſin, before he ſhall be delivered out of priſon, he ought

ought to remove the Record into the Kings Bench, and there to make his fine with the King, &c.

Nota, *Auxi lou home est in prison come convict de* Redisseisin, *ses amyes poent vener in Chancery, & monstre que tiel home est imprison in tiel lieu, &c. per reason d'un* Redisseisin, *& que ils sont venus, preyont que ils poient faire un Fine pour luy, accordant al Stat. Et que le Seign. Chancellor voile estre pleasé de granter un brief al vic. del County lou il est imprison, rehersant que il ad fait un fine devant luy in le Chancery pour le* Redisseisin, *Et commandant le vic. de enlarge luy come avantdit.*

Auxi dicitur *que ses amyes poient preyer d'aver un brief direct al vic. commandant luy que il prist un fine del party issint in prison, & apres de luy lesser aler alarge.* Vide Register 123. accordant.

Et sic *ceo fine poet estre assess in le Chancery per le Seign. Chancellor; ou per & devant les Justices de lun Bank ou del auter (ils aiant le Record devant eux come avantdit;) Ou in le pais per & devant le vic. (come semble) per force del brief le Roy; mes nemy* ex Officio, *nec sans brief le Roy* ut sup.

Cestuy que est atteint de Redisseisin, *serra prise & mise in prison pour la demurrer, tanque il ad fait gree, ou fine al Roy* ut sup. *pur le Contempt, Et auxi rendra al party plt. ses damages in* duplo (sc. *ses double damages,) Et in le meane temps serra irreplegiable, &c. & ceo est per force del dit Stat. de* West. 2. 26.

Se cestuy qui est atteint de Redisseisin *ne soit deins mesme le County (issint que le vic. ne poiet luy prender) donque le Record serra remove,* Et Capias *issera al vic. del County ou il est, &c.*

If a woman covert shall commit a Redisseisin, **she shall be imprisoned by the Sheriff, according to the Stat.** Co. 9. 72.

The reason of the punishment inflicted by the Law upon Redisseisors, or such as shall disseise others who are in by judgment of Law, is chiefly to avoid oppression, and that there might be end of suits, for otherwise malicious persons by their infinite vexations would weary such as have right, and in the end compel them to relinquish and give over their right, contrary to the Rule and reason of Law, and to the dishonor of the Common Laws of this Realm, which utterly abhor infiniteness and protraction or delaying of suits. Co. 6. fol. 9.

West. 2. 26. Per Statutum de West. 2. cap. 26. *Tiels avera remedy per brief de* Redisseisin, *queux ont recover per default reddition, ou in ascun auter manner, sans recognition* Assisar', sive Jurator', 13 E. 1. c. 26. *Regula.*

West. 2. 18. *Auxi per mesme le Statute* cap. 18. *Tenant per* Elegit *avera brief de* Redisseisin, sc. *si il soit ouste, &c. il primes recovera per brief de* Novel Disseisin, & postea *per brief de* Redisseisin, *si besoigne.* Fitz. 189. i.

Auxi tenant per Statute Merchant ou Staple, avera brief de Redisseisin, &c. Stat. de mercatoribus, 13 E. 1. Fitz. 189. i.

Et issint semble de touts auters, que ont estate in terres, &c. per Judgment de Ley, Vide Termes del Ley tit. Elegit.

Quant brief de Redisseisin gist, Et vers que ne gist. Co. L. 154.

Auxi cestuy Stat. extend al Rent charge ou Rent Seck, car coment que ils sont encounter Common Droit, uncore home ad Freehold in eux. Co. L. 154.

Les parols del Stat. de Merton *sont* sic, Et ipse disseisitus per vic. seisinam suam habuerit, &c. Ex quo notandum est *que si le disseisee entre sans estre mise in possession per le vic. que il navera brief de Redisseisin; Et pur ceo si le disseisee recover son seisin, & puis enter & apres est ouste per mesme le disseisor, icy il navera brief de* Redisseisin, *pur ceo que navoit seisin deliver a luy per le vic. (per brief de* Habere fac. seisinam) *mes ad enter luy mesme apres son recovery.* Vide Br. Redisseisin 5.

Si brief de droit Patent soit port in Anc. Demesne, Et le plt. recover, in ceo case si le plt. soit apres Redissei. &c. le plt. ne poet aver brief de Redisseisin, *pur ceo que le vic. ne poiet Enter in Anc. Demesne; uncore* vide hic cap.70. & 72. *que sur brief le Roy, le vic. poet Enter en semblable Cases.*

Auxi si le Seignior d'un Franchise aver Conusans in Assise, & puis le plt. est Redisseise deins mesme le Franchise, semble icy que le vic. poet Enter in le Franchise, & fera Execution, &c. eo que ceo brief de Redisseisin *est un* Non Omittas, &c. *Et uncore le vic. icy doit Escrier al Bayliff del Franchise pur fair vener le Jury.* Abr. d'Ass. 148.

Nota *que sur brief de* Redisseisin *direct al Vicount, le vic. doit seer in proper person, (& nemy per Attorney, nec per son Southvic':) car icy il est fait Judge de Record.* 7 H. 7. 4. Br. Parliam. 95. & hic cap. 4.

And although upon this writ of Redisseisin, **the High Sheriff must sit in his own person, and be therein sole Judge, yet he must have two (Coroners at the least) to sit with him; for the words of the Stat. of** Merton **are further,** Et ideo mandetur vic. quod assumptis secum Custodibus placitorum Coronæ, Domini Regis, &c. **Now these** Custodes placitorum Coronæ **be the Coroners, who must also joyn with the Sheriff in making up of the Record.**

Sur brief de Redisseisin, *si le Vicount priegne linquisition devant luy mesme sole, Ou devant luy mesme & un Coroner, & le* Redisseisin *est trove, & le dissor' ouste, il avera Assise: Et si le dissor' in ticl case soit commit al prison per le vic. il avera action de faux imprisonment de ceo vers le Vicount. Car le inquisition fuit prise* coram non judice; *car le Stat. de* Merton c. 3. ac etiam *le brief de* Redisseisin *direct al vic. dit* quod assumptis tecum custodibus placitor' Coron', &c. *Et cest parol* (custodibus) *in le plural number ne poet estre satisfie ove un Coroner, si sont plusors que un in le County, mes* duorum numerus sufficit. Vide Co. 10. 103. & 23. Ass. pl. 7. Br. Redisseisin 3. & Mr. Plo. fol. 393. Fitz. Rediss. 2. Stamf. 53. c.

Mes in ceo case les Coroners ne sont my Judges de Record, mes aide al vic. ut supra, *& le vic. solement est Judge, &c. Car si brief de Error soit port de cel Enquiry, le Record ne reberce my que ceo fuit fait devant les Coroners, mes devant le Vic.*

Et si le vic. voile faire un Record sur le Redisseisin, *& les Coroners voila faire auter, les Justices ne voilent prender le Record fait per les Coroners mes le Record fait per le vic. uncore* Br. Deputy 20. *le vic. & Coroners judger ceo.*

Auxi les parols del dit Stat. de Merton *sont,* quod assumptis secum custodib. placitorum, & aliis legalibus militibus, &c. *per queux parols semble que le vic. doit prender auxi ove luy, auters Chivalers, ou loyal homes Inhabitantes prope a mesme le Tenement, &c. de que le pleint est fait, Et devant les Coroners, & eux, per les primer Jurors, & per auters vicines, ils feront le Inquisition.*

Mes cel Inquisition ou Enquiry ne serra, le quel le plt. fuit dissei' ou nemy, mes le quel il fuit Redisseise.

Et le vic. doit fair un Record, sur le Redisseisin trove per tiel Inquisition, Et de Retorne ceo, sc. *que il ad enquire, &c. in le presence de tiel Coroners, & tiels auters Loyal homines, &c. per les primer Jurors, & per auters, &c.* 23 Ass. 7.

Also the Sheriff must return quod Accessit ad locum **or** ad Tenementa infrascript', **and not** quod Accessit ad villam, 11 H. 4. 6. **But he may return** quod apud S. (**being the Town where the land lyeth**) fecit Inquisitionem, &c.

Auxy les parols del Stat. de Merton, *sont que il ferra inquisition per* primos juratores, & alios, &c. *Et pur ceo covient que sont ij. del primer Jurors al meins; & si touts les primer Jurors sont morts, ou touts forsque un, donque il serra prise, ne avera* Redisseisin, &c. Tamen quære, *car coment que touts les primer*

primer Jurors sont morts forsque un, dicitur *que pur cee que le brief de Redisseisin voet*, tam de illis qui in prima Jurat. fuerunt, quam aliis, &c. *que pur ceux parols serra intend, si ascun de eux soit in vie, que le inquisition serra prise.* Vide Fitz. Rediss. 11. 8 H. 5. 1. Lectur.

Auxi coment que touts les primer Jurors sont in vie, uncore le vic. prender deux auters al meins; auterment le Inquisition prise devant luy est coram non judice, *& brief de error bien gist.*

Les primer Jurors ne serront prise in le Redisseisin, *sinon que ils passe sur le principal del action; & nemy sur enquiry de damages.*

Le party poit aver challenge a les auter Jurors, mes nemy al primer Jurors. Vide Br. Chall. 27. & Keil. 125.

Uncore dicitur que ou le vic. impannel le Array, la le party n'avera ny Challenge al array, pur ceo que le vic. est Judge, & per intendment voet faire ovel droit as parties; Et auxi pur ceo que est forsque Enquest de Office. Vide Kiel. 125. & Lectur.

11 H. 4. f. 6. Co. 8. 152. 7 H. 7. 4. Br. Parliam. 59. *Auxi semble per les parols del Stat. de* Merton, ac etiam *per parols del brief* (in propria persona, accedat ad terram) *que le vicount doit faire son enquiry, & prendre le Inquisition sur le terre ou tenements, de queux complaint est fait, & uncore si le vicount viender, & causer le Jure de vener & veier le lieu, terres, ou tenements, que donque il poit prendre & faire le Inquisition in auter lieu; car les parols del Stat. & del brief, esteant*, quod accedat ad terram, &c. *ceo est observe pur vener illuc, coment que lenquiry, & verdict soit al auter lieu: (mes semble doit este deins mesme le ville ou le terre gist.)* Vide Fitz. Error 51. 64.

Br. Rediss. 9. *In* Redisseisin *in divers villes, le vicount & coroner ira al touts les villes, mes ils poient prender lenquest a lun vill* tantum sc. *in quel il pleist al vic.* per Ca. 40. Ass. p. 23. *Issint est in brief denquire de wast in divers villes*, quod vide hic antea tit. Wast, fol.

11 H. 4. f. 6. *Auxi le vic. poit varier del retorn del Bailif, & poit mitter sur le enquest tiels que ne fuer' retorne per le Bailife, car le vic. mesme est le person que fait larray, que auxy est Judge in le case: Et uncore lou le vic. (in tiel case) ferr' son precept al Bailiff de retorn' le Jury, que retorn' ce', & il maund cest ret' come parcell del record, per ceo le vic. ad affirme le ret' del Bailiff, & icy si le vicount varier del Retorne le Bailiff (& prender lenquest per auters) cest semble deste error.*

Nota que cest brief de Redisseisin, nest que enquest de Office. Br. Atteint, 1. & 79.

Le vic. ne poet resceiver Attorney pur nul party (in Redisseisin) sans brief come semble. Abr. d'Ass. fol. 148.

Le disseisor in Redisseisin pleder nul plee in barr; Car sil ad Releas pur le Redisseisin semble il avera Audita Querela, *Ou* Supersedeas, *ou un* Certiorare *de remover le matter, Et sil soit infeoff, il avera Atteint; Et si ad fait fine, il poet aver* Supersedeas, &c. Tamen *semble que le tenant del terr que est eint per title poet pleader, &c.*

Auxi le vic' n'ad poier de trier ascun plee hors de point de Redisseisin, Ne accepter ascun forein plee, mes fera accordant al brief que est son Commission, &c. Abr. d'Ass. 147. Keil. 125. Vide.

Si le vic' ne voet Execute ceo brief, la gist Alias, *& plur. & Attachment a les Coroners.* Fitz. 881. 1.

CAP. 94.

Where the Sheriff, &c. may break open an house, or break open the doors, &c. to execute the Kings Proces or Writ.

When any house is recovered in or by any real action, or by any Ejectione firmæ, there the Sheriff or Officers, upon an habere facias seisinam, or possessionem, may break the house and deliver seisin and possession thereof to the Plaintiff, for that after Judgment it is no more (in right or in the Judgment of Law) the house of the Def. or Tenant. Co. 5. 91.

Yea the Sheriff upon the Habere facias Seisinam, may and ought to execute the writ, although that indeed an Estranger be seised of the Land, and that neither of the parties to the writ were seised thereof. Plo. Com. Manxel's Case, fol. 12, 13.

But the Sheriffs, nor his Officers, cannot justifie the breaking of any mans house to make execution upon a Capias ad satisfaciendum; Nor break any house or chest, &c. to make execution by virtue of a Fieri facias; nor to execute any other the Kings proces upon the body or goods of any person, at the suit of any Subject (for any debt, damage, trespass, or the like, for there it is but a particular interest of the party) and if he do, he is therein a Trespasser. But where the King is a party, there the Sheriff may justifie th breaking of the house to do execution of his process, if he cannot otherwise execute his proces; And yet first he there ought to make request to have the door opened, and must withall signifie the cause of his coming. Co. 5. 91. & 13 E. 4. 9. Fitz. Bar. 110. Br. Execution 100. Co. 5. 91, 92.

Note, that in all cases where the King hath any interest, the writ is Quod non omittas propter aliquam libertatem, and therefore the privilege of any mans house will not hold against the King. But where the King hath no interest, but only a common person, There the Sheriff, although he make request to have the doors opened, &c. and that denial be made him to enter, &c. yet he may not break them, and so enter and do execution of his proces, For by such means great inconvenience might arise, that men in the night, as well as in the day, should have their houses broken, upon any feigned matter. For although that the Sheriff himself be a man of especial note and worth, and his office of great authority and trust, yet we see by daily experience, that all or the most part of the Kings Writs are served and executed by their Under-sheriffs and Bayliffs, which most commonly are persons of small worth and account.

And yet where the Sheriff shall break a mans house, or chest, being lockt, &c. to make execution upon a Venire facias, although he shall be punished as a trespasser for breaking the house or chest, yet he shall not be punished for taking the goods, 18 E. 4. fol. 4. but the execution which the Sheriff so made, is good. Br. Execution 100. Co. 5. 93.

Note, that in all cases where the door is open, the Sheriff and his Officers may enter into the house, and make execution, at the suit of any Subject, either of the body or goods: Co. 5. 92. But if the door be shut to, and only latched, (but not locked nor barred, &c.) the Officer may not draw the latch and so enter, per Curiam M. 36 Eliz.

And yet if the door be open, and the sheriff or bayliff come to the house, and sheweth the Kings process, and offereth to enter to execute the same

process (being at the suit of any Subject) and the owner of the house, &c. shuts the door against the Sheriff, &c. here the Officer, giving Notice of the cause of his coming, and requesting to have the doors open; may break open the house, if the party refuseth to open the door. Vide Co. 5. 92, 93.

I have seen the report of a Case adjudged in Mich. Term An. 17 Jacobi Regis, in Banco Regis Rotul. 1049. between White Plt. and Wiltshire (an Under-sheriff) Def. where in an action of Trespass Quare clausum fregit, domum intravit, ostium fregit, & seras fregit & abjecit, &c. The Def. for the breaking of the house, &c. justified as followeth, viz. He pleaded that the Sheriff of that County had made him Under-sheriff, and that a Fieri facias was directed unto him, to make execution of the goods of the Plt. And that he made his warrant to five of his bayliffs to make execution, and that his bayliffs found the door open and entred, and that the Plt. shut the doors upon them, and detained them in prison in his house by the space of 24 hours, And that he to deliver the bayliffs did break the door, and that he being so in peace in the house, for the execution of the said writ, he broke open the inward doors, And thereupon the Plt. Demurred; And three Objections were made to this Justification.

1. For that the authority to the bayliffs was made to five joyntly, or severally, and that two only made the execution.

2. For that according to Semaynes Case, Co.5.92. upon a Fieri fac. in case of a Subject, the Officer cannot break the house of the party to make execution, for his house is his castle of safegard: And admitting that he may break the first door, yet being entred he cannot break open the inward door.

3. Admitting that he may break the doors, yet it ought to be averred that there were goods within the rooms whereof the doors were broken.

To the first Objection the Councel of the Def. answered, That it hath been often adjudged (and named one Abington's Case in Banco,) that upon such an Execution and Warrant, the bayliffs, five, four, three, two, or any one of them might execute the same, for that it is for the administration of Justice, and for the publick good that Execution be made: And all the Court were against the Plt. in this point: And Sir John Doderidge said, That meer strangers to the Warrant might aid the bayliffs in this case.

2. To the second point this diversity was taken, sc. when an Execution is once lawfully begun, there the Sheriff or his Officers may break the house to make Execution, &c. Otherwise when it is not lawfully begun; But here it was lawfully begun, for the outward door was open, and they lawfully entred into the house, so that after their Entry the Plt. cannot prevent the Execution, although that he might (peradventure) have prevented it, if that he had shut the door before the entry of the Officers: and for this also the case of Sir W. Fish was cited, wherein this former diversity was taken and agreed of for Law. The case was this, the Sheriff had a Capias ad satisfac. delivered to him against Fish, whereupon F. was apprehended, and then the said F. made an escape from the Sheriff and got into his house, and the Sheriff presently broke open the door of his house, and took him again, and it was adjudged to be well and lawfully done, for that there was a lawful beginning of the Execution before, and that now he pursued the Execution lawfully begun; and all the Court agreed to this diversity. And Sir Henry Mountague Chief Justice said, True it is that an house is a castle, for him that dwelleth there, for his repose and safety, and

that

that it is priviledged against the Execution of the Subject, when it is close and the doors shut, yet when in this case the entrie of the Minister of Justice was lawful, and the owner of the house shall abuse this priviledge, and shall make resistance, and shall lay his hands, &c. upon the Minister of the Law, he hath thereby lost his priviledge, and hath made resistance to the Law, which now will not protect him in such a case, and this is the reason, that every one which shall kill an Officer in the doing of his duty shall be a murtherer. Dodridge, when a man hath begun a lawful Execution, such as shall resist the same do resist the act of the Law: and the possessions, houses, and lands of every man are chargeable by the Law to such Jurisdiction of the King and his Ministers (as it is in Manxel's Case, Plo. fol. 13.) Sir Robert Houghton, if one be arrested by the Sheriff, and he escapeth to his own house, and the Sheriff pursueth him, and breaketh open the doors of his house, and taketh him again, and so continueth his first possession of his prisoner, the party shall never take benefit of this his own wrongful escape.

3. And as to the third point the Council of the Def. answered, That for breaking of the inner doors, they needed not to averr that there were any goods there, for the Officer cannot know that, before his entrie, and by intendment a man hath goods in his own house, whereunto Dodridge and Houghton Justices did agree, and said further, That if the Sheriff were in one room, he may break open another (to execute his writ, &c.) upon refusal to let him go in.

And as to that which was said in this case before, that the Sheriff cannot deliver his bayliffs upon his own authority, but ought to have sued out a writ de Homine Replegiando, Dodridge said, that were against all reason, that the Officer of the Law should be put to such an inconvenience for the execution of his Office. And Judgment was given by the whole Court against the Plt. And Justice Houghton moved that the Court ex Officio would grant out Process de bene gerendo, and an Attachment against the Plt. for thus abusing of the Officers of the Law.

The Sheriff and other the Kings Officers, which shall enter into any house or land, or shall meddle therewith, to do things requisite for the Execution of the commandment or writ of the King, or of his Courts, Or for the Examination of the titles of the parties complainants, or the Execution of the rights tried or adjudged, are dispunishable: So that if A. be seised of land in fee upon a good and undefeasible title, and an estranger shall demand this land by a Præcipe, against another stranger, and upon this the Sheriff or Officer by virtue of the Præcipe cometh upon the land with Summoners, and summons him against whom the Præcipe is brought, and after the demandant recovereth against him by default, or by issue tried, And that by force or virtue of an habere facias seisinam the Sheriff cometh again and putteth him, who hath recovered, in seisin thereof, and then departeth; here A. cannot punish the Sheriff or other Officer, for their first coming, nor for their second coming upon the land, For that the Officer doth nothing but execute the Kings commandment, in manner and form as he had in charge. Plo. Manxel's Case, fol. 13. 14. And if A. shall shut or keep shut the door of the house so recovered (by default) or by issue tried, yet the Sheriff by virtue of the Habere facias seisinam, may break open the door and deliver seisin thereof to him which hath recovered, &c. Co. 5. 91. hic antea.

Whether upon an Injunction out of the Chancery for to deliver or yield the possession of an house, directed to the Defendant, and commanding

manding the Sheriff upon an Attachment which is granted at the suit of the party (out of the Chancery) for not performing an Order of that Court, or for some other contempt) it seemeth the Officer cannot break open the house to take the party so offending. Cromp. *Author. des Courts*, fol. 33. Tamen quære, for that the words of the Attachment are thus, Ad respond. nobis tam de quodam contemptu nobis illat. &c. So as the King seemeth to be a party, &c. in regard of the contempt.

But upon a Commission of Rebellion out of the Chancery, the Sheriff, or his Officers (or the Commissioners, may break open the doors or house to apprehend the party being therein (whether he be within his own house, or in the house of any other, if they will not open the door, or deliver him, &c.) Cromp. *Author. des Courts*, fol. 47.

Also in Execution of the Commission of Bankrupts, the said Commissioners, or any Officer or Officers, or other person, by the said Commissioners, or the greater part of them deputed and appointed by their warrant under their hands and seals, may break open the houses, chambers, shops, warehouses, doors, trunks, or chests of the said Bankrupt, wherein the said Bankrupt, or any of his goods or estate shall be, or reputed to be, and to seize upon and order the body and goods, &c. 21 Jac. cap. 19.

But the Sheriff, &c. ought not to break open any mans house in the Night, to execute any Proces, or to do any other ministerial act, &c. See hic cap. 22.

Also it seemeth that the Sheriff cannot break open a door, or a gate, &c. to distrain for the Kings rent; or to levy any fine or amerciament, issues, debts, or other such like duties due to the King, Quære if it be by the Kings Writ or Proces out of the Exchequer, &c. See hic cap. 19.

The Sheriff may break open, or beat down a Castle, Fort or House, to make replevy and deliverance of Cattel there impounded, and withholden, &c. Westm. 1. cap. 17. Hic cap. 114.

The Sheriff may not break open a Close to make a Replevin, where there is a gate, Except that be locked up, &c. 20 H. 6. 30.

Upon a Fieri facias if the Officer shall break open a house, door, or chest, to take goods in Execution, an action lieth against him, *mes* tantum *pur le debruiser*. 28 E. 4. 4.

And note, that in all cases where the King is a party (as for Felony, &c.) or hath interest in the business, the Sheriff, and his Officers, if no door be open, and that they cannot otherwise enter, may break open the doors, or house of the party offending, or any other house where the party is, to arrest the offendor, or to make other execution of the Kings Proces, &c. Co. 5. 91, 92.

13 E. 4. f. 9.

As if a man be Indicted of trespass, and a Capias pro fine be awarded to the Sheriff to take the body of the same person, The Sheriff may break open the party or offendors house, or doors, or any other mans house wherein the offendor shall be, to arrest the offendor. And so upon Hue and Cry levied after one who hath stricken another, so as he is in any danger of death. 7 E. 3. fol. 16. Co. 5 91, 92.

27. Ass. p. 35.

If a man be outlawed of Treason, or Felony, or in any personal action, whereby a Capias utlagatum shall be directed to the Sheriff to apprehend and take him, the Sheriff, &c, may break open the house to apprehend him.

See more hereof in my Country Justice, titulo Forcible Entry.

But note, that though the King be a party, yet the Sheriff and his Officers, &c. before they shall or may break open any house or doors, ought to signifie the cause of their coming, and to make request that the doors may be opened, &c. Co. 5. 91.

Also note, that no mans house shall be any priviledge to or for any stranger; Nor shall extend to protect any person that shall be there, or fly thither, Nor to protect the goods of any other that shall be brought or conveyed thither, to prevent any lawful execution, or to escape the ordinary proces of Law. But the priviledge of every mans house shall extend only to himself and his family, And to and for his proper goods, or to such as are there lawfully and without fraud or covin: And therefore if the Sheriff having proces to be executed upon the body or goods of any stranger, do desire to have the door opened, or to have the body of the party flying, &c. thither, or the goods of another brought thither, to be delivered unto him, After such request made to open the door, or to have the body, or goods, of such person delivered him, if denial or refusal be made, or that it be not done, Then the Sheriff, or his Officers may break open the house, and may execute the Proces, without any danger of law. Co. 5. 93.

Also if the Sheriff do break open the house (in any the cases aforesaid) where any of the doors of the same house be open whereby he may enter, or where he may open the door by a key, or otherwise, without breaking the house or door, he is a trespasser, and subject to an Action.

CAP. 95.

Where the Sheriff, &c. may take Posse Comitatus.

Posse Comitatus

The Sheriff, or his Under-sheriff, or Bailiff, &c. may (nay ought if need be) to take the power of the County, (sc. what numbers of persons they shall think good; to aid him, or them, to execute in every behalf the Kings Proces or Writ, (be it by a Writ of Execution, Replevin, Capias &c. or any other Writ) it being the Kings Commandment; And such as shall not assist the Sheriff, &c. therein, being required, shall pay a fine to the King. Bro. Parliament & fines 37. & Trespass 266.

The Statute of Westm. 2. cap. 39. is direct and full in this point, saying, Sheriffs make many times false answers, returning that they could not execute the Kings precept for the resistance of some great man; wherefore let the Sheriff beware from henceforth, for such manner of answers redound much to the dishonor of the King. And as soon as his Bailiffs do testifie that they have found such resistance, forthwith all things set a part (taking with him the power of the Shire) he shall go in proper person to do execution, &c. See hic antea fol. West. 2. 13 E. 1. 39.

But it seemeth by this Statute that the Sheriff shall not take the power of the County, but only post querremoniam factam, and not before, And yet it is holden that the Sheriff may do it by the Common Law, for quando aliquid mandatur, mandatur & omne per quod pervenitur ad illud. See 3 H. 7. fol. 1. & Co. 5. 115.

Also by the Statute of West. 1. cap. 17. If a distress be impounded in a castle or fortress, and detained, the Sheriff or Bayliff taking with him the power of the Shire, &c. may cause the said castle or fortress to be beaten down. See hic postea. West. 1. 17.

And by the Book 19 E. 2. Fitz. Execution 147. upon a writ of Seisin, the Sheriff returned that he could not deliver seisin for resistance, and for that the Sheriff did not take the power of the County, according to the Statute, he was amerced twenty marks.

So

So in a Replevin, if the Sheriff return that the cattel are in a fort, or a castle, so as he cannot make deliverance, he shall be amerced, causa qua supra.

Lamb. 309. Note, where the Sheriff, or other Officer, is enabled to take the power of the County, they may command, and ought to have the aid and attendance of all Knights, Gentlemen, Yeomen, Husbandmen, Labourers, Tradesmen, Servants, and Apprentices, and of all other such persons, being above the age of 15 years, and that are able to travell: to which purpose also, see the Sheriffs Patent of Assistance (here before fol.) whereby there is commandment given to all Archbishops, Bishops, Dukes, Earls, Barons, Knights, and all other the Kings Subjects within the same County, to be aiding to the Sheriff in whatsoever belongeth to his Office.

And in such cases they are not appointed any number, but it is referred to the discretion of the Sheriff, &c. what number they will have to attend upon them, and how, and in what manner they shall be armed, weaponed, or otherwise furnished.

3 H. 7. 1. The Sheriffs Bayliff to execute a Replevy, took with him three hundred men armed (modo guerrino) &c. with Briganderes, Jackes, and Guns, and it was holden lawful; for the Sheriffs officer hath power to take assistance, as well as the Sherif himself. Br. Riots 2. Vide Co 5 72.

12 H. 7. 17. Also the Sheriff may take Posse Comitatus, in defence of the Realm, when any of the Kings enemies shall invade the land, &c. See here fol.

The Sheriff also may take Posse Comitatus, (any number that he shall think meet) to pursue, apprehend, arrest and imprison Traytors, Murderers, Robbers, and other Felons, or such as do break, or go about to break, or disturb the Kings peace.

And it seemeth, that in all cases where the Sheriff may take Posse Comitatus, there also he may make Proclamation, commanding in the Kings Name, all persons (meet) to come and go with him, and to aid him, for the apprehending of Traytors or Felons, suppressing of Rioters, pacifying of an Affray, or the like, Or in any other thing belonging to his Office, where he shall find any resistance.

The Sheriff, &c. upon any lawful Warrant. for the apprehending of any Popish Recusant, &c. may take Posse Comitatus, &c. See the

P. Recusants 52. Statute 3 Jac. cap. 4.

A man demands the Peace in Chancery against a great Lord, and hath a Supplicavit directed to the Sheriff, &c. there, if need be, the Sheriff may take Posse Comitatus, to aid him to arrest such a Lord, &c.

The Sheriff also may take Posse Comitatus, to execute the Precept or Warrant of the Justice of Peace: as in case of forcible entry, to make restitution, &c.

But it seemeth in such cases where the power of the County is to be raised or taken, that the Bayliff must have warrant from the Sheriff to do it, and that he must be a known Bayliff or Officer, that must do it.

Note, that the Sheriff, or his Officers, may take the power of the County by force of the Common Law, and that the Statute of Marl. cap. 21. & Westm. 1. cap. 17. & Westm. 2. cap. 39. are but a confirmation of the Common Law, for the taking of the power of the County by them, and that as well for the safegard of their persons, as to execute the Kings Writ and Commandment by Writ. 3 H. 7. fol. 1.

And every man is bound to aid and assist the Sheriff, and to maintain him

him in his Office in the Execution of the Kings Writ, for this is the Commandment of the King. 3 H. 7. 1. Br. Trespass 266.

Also the Sheriffs Bayliffs (or his servant, having the Sheriffs Warrant) hath the same authority that the Sheriff himself hath, and every man is bound to aid them in their business, and that both by the Common Law, and Common Reason.

And every man is sworn (saith Keble) to be aiding to the Sheriff in his business; and if they do it not at the request of the Sheriff, they shall be fined. 3 H. 7. 1. Br. fine pur Contempts 37. & Trespass 266. See also the Stat. of 2 H. 5. cap. 8. which inflicteth both fine and imprisonment upon such as shall not aid the Sheriff, they being thereunto required.

If the Sheriff (or his Under-sheriff, Bayliff, or Servant having the Sheriffs Warrant) shall take Posse Comitatus with them, without any sufficient cause, yet such as therein shall be aiding to the Sheriff, or his said Officers or servant, may well justifie such their doing by the Commandment of the Sheriff or his said Officers, &c. 5 H. 7. 4, 5.

CAP. 96.

Bailment of Prisoners by the Sheriff.

Bailment. Bailment is properly the freeing or setting at liberty, of one arrested, or imprisoned, upon action, either Civil or Criminal, upon sureties taken for his appearance at a day and place certainly assigned, Bracton, and cometh of the French word Bailler, i. tradere, to deliver up, because he is then delivered into the hands of them, that bind themselves for his forth coming. Master Manwood maketh a great difference, between bail, and mainprise; for (saith he) he which is mainprised, is always said to be at large, and to go at his own liberty, out of ward, after he is let to mainprise, until the day of his appearance: But it is otherwise where a man is let to bail, until a certain day, for there he is always accounted by the Law to be in the ward or custody of his sureties, for the time they undertook for him; and they may, if they will, keep him in ward or prison, all that time: So that he that is bailed, shall not be said to be at large, or at his own liberty. See Master Lamberts Justice of Peace, tit. Bailment, agreeing with this difference. *Mainprise.* Minsh.

But in our Law these two words Bailment, and Mainprise, are notwithstanding indifferently used, to express that surety which the prisoner is to find in such case. Lamb. Ibidem.

And yet Bailment seemeth to imply the delivery, and Mainprise the receiving of the prisoner, &c. and so these two words to be Relativa.

Detain persons bailable. If the Sheriff, Under-sheriff, or Bayliff, &c. shall detain any prisoners who are bailable, after they have offered sufficient sureties, the Sheriff, &c. shall be therefore grievously amerced to the King. 3 E. 1. cap. 15. See 23 H. 6. cap. 10.

Bail persons not bailable. If the Sheriff, Under-sheriff, or other Officer, shall let to bail any persons which are not by them bailable, they are also punishable therefore by the Judges of Gaol-delivery. See the Statutes, 3 E. 1. c. 15. 27 E. 1. c. 3. 4 E. 3. c. 2. & 23 H. 6. c. 10. P. Main. 3. 4. Fitz. 251. 1.

If the Sheriff shall let a man to Mainprise, in case where he is not Mainpernable, it is an Escape. 25 E. 3. Abr. d'Ass. 74. Fitz. Escape 4. & Coron. 246.

And

And if the prisoner were in for Felony, and the Sheriff shall deliver him upon upon Bail or Mainprise, this seemeth to be Felony in the Sheriff, for that as it is a voluntary act done by him, so it is without authority; For the Sheriff hath no authority, at this day, to bail any such prisoner, except it be upon or by virtue of the Kings special Writ to him directed for that purpose. Fitz. fol. 250, 251. Register 269, 270.

23 H. 6. c. 10. Fitz. 251. b. — But Sheriffs, Under-sheriffs, and other Officers ought to let to bail, and out of prison, all manner of persons being in their keeping, or by any of them arrested by force of any Writ, Bill, or Warrant, in any action personal, or upon any Inditement of trespass, upon offer of reasonable surety (of sufficient persons,) having sufficient within the County where such persons be so let to bail) to appear at the day and place, as the said Writs, Bills, or Warrants shall require (or where the same are returnable) except such persons as are hereunder mentioned, sc. the persons in the seven Cases following; — *Quere persons bailable.*

Fitz. 251. b. Dyer 119. Co. 10. 100.

Except all such as are in their custody.
1. By Condemnation.
upon Capias
2. ad Satisfaciendum, or other Execution.
3. Utlagatum.
4. Excommunicatum.
5. For surety of the peace, and yet by the Common Law the Sheriff might have bailed such before.
6. By commandment of any Justice. See Stamf. 73.
7. And Vagabonds, or vagrant and idle persons refusing to serve, and which remain in prison under the custody of the Sheriff. Fitz. 251. b.

23 H. 6. c. 16. Plo. 63. — The first branch of the Statute of 23 H. 6. is a precept and commandment to Sheriffs, that they shall let to bail prisoners which are arrested in personal actions, &c. the which Sheriffs could not do before this Statute. Co. 10. 100.

The second branch of this Statute was to restrain the bailing of others contained in the exception; so that Sheriffs shall not bail any such persons as are in execution upon any Statute, or Recognizance, or upon any Judgment given in any of the Kings Courts for any debt or damages at the suit of any person, for that such persons shall not be bailed, nor suffered to go out of prison by Baston, (sc. with a Keeper) until they have agreed with the parties of that whereof they were judged, or for which they are in execution (unless it be by Writ, or other Commandment of the King.) See the Statutes of Acton Burnell, & de Mercator' made 13 E. 1. 1 R. 2. cap. 12. & Fitz. 121. a. 251. d. Plo. 36, 37.

Mes si Home soit condemn in ascun Court, & son corps prise in Execution, icy son corps poet estre remove per brief de Corpus cum Causa, *ou per* Certiorari *(hors del Chancery); mes il ne serra bail, sed serra remaund al prison; la de remain, quousque il ad satisfie le Plt. &c.* Stat. 2 H. 5. cap. 2.

Neither shall any Sheriff bail any person, taken by a Capias Utlagatum, Excom' Capiendo, for Surety of the peace, by commandment of any Justice; Nor Vagrants. Ut supra Stat. 23 H. 6. cap. 10.

Neither shall Sheriffs bail any prisoner or person which is taken for any manner of treason or felony. See the Statute of Westm. 1. cap. 15. 27 E. 1. c. 3. 23 H. 6. cap. 10. & 1 R. 3. cap. 3. for that power is now taken away from the Sheriff, and transferred to the Justices of Peace, in cases of Felony.

See

r See more in my Country Justice, tit. Bailment, what persons are bailable, and what not.

If the Sheriff, Under-sheriff, or other Officer shall detain any prisoner who is bailable as aforesaid, after sufficient sureties by the prisoner offered, or shall let to bail any person which is not bailable as aforesaid, such Sheriff or Officer shall lose to the party indamaged or grieved treble damages, and besides shall forfeit forty pound to the King and Informer. 23 H. 6. cap. 10.

Officer prendre sureties. Note, that the Bailiff, or other Officer, which arrests one by vertue of any Warrant, &c. ought to take sureties of the party arrested (if he be bailable) and this by force of this Statute of 23 H. 6.

And therefore the prisoner is not bound to go to the Sheriff if he offereth sufficient sureties to the Bayliff.

The abuses of Sheriffs in bailing of prisoners, before this Stat. of 23 H. 6. see in Plo. 67.

The third branch of the Statute contains the form of the Obligation whereby they shall be let to bail; and makes Obligations taken in other form than the Statute limits and appoints, to be void. Co. 10. 100.

Forme del obligation. Now for the form of such Obligations as the Sheriff, or his Officers shall take (for the appearance) of such as they shall let to bail, the words of the Statute are thus; No Sheriff, nor any of * his Officers or Ministers, shall take, or cause to be taken, or made, any obligation for any cause aforesaid. Or † by colour of their Office, but only to themselves, of any person, nor by any person which shall be in their ward * (by course of the Law) but by the name of their Office, and upon condition written, that the said prisoner shall appear at the day contained in the said Writ, Bill, or Warrant, and in such places as the said Writs, Bills, or Warrants shall require. Dyer 119. Co. 10. 100.

23 H. 6. c. 10. * Vide Dyer 324. a. for this word, his. † Nota ceux parols, & vide eux bien expound, Plo 10. 68. * Vide Plo. 69. a. Co. 10. 100. Plo. 68. Dyer 119.

If the Sheriff, Under-sheriff, Bayliff, or other person shall take any bond or obligation of any person being in their custody, in any other form, by colour of their Office, such obligation shall be void, and besides the Sheriff (or other Officer) taking such obligation contrary to this Statute, shall lose to the party damaged or grieved in this behalf his treble damages, and besides shall forfeit 40 l. to the King and Informer.

Now then seeing that Sheriffs, Under-sheriffs, and other Officers, after they have arrested one that is bailable, they then are to bail him, and ought to take bond for the appearance of their prisoners, before they deliver them, it behoveth them to be heedful and careful, that their bonds be made according to Law, wherein let them mark these Observations. 23 H. 6. c. 10.

1. First, the bond must be made to the High Sheriff himself (or to his use) by the name of Sheriff, and not to the Under-sheriff, nor to any other.

2. Next there must be nothing inserted or put into the condition of that bond, but only that the Defendant shall appear (in the Court, from whence the Writ issued, or in such place as the said Writ or Warrant shall require) at the day contained in the said Writ or Warrant (being the day of the return thereof) and there to do as the Writ requireth. Plo. 69.

And yet if the condition be to appear generally, or to appear and answer; or to appear in person, it is good enough, notwithstanding such addition. See postea.

3. And concerning the prisoner or party to be bailed, it is meet, and safest for the Sheriff, that he be bound with two sureties, having sufficient

ficient within the same County; but this not of necessity, but only for the safety of the Sheriff.

Cromp. 106. a. A bond entred into by a prisoner, to any person save only to the Sheriff, for the enlarging of the prisoner, is not good, but meerly void in Law, by this Statute of 23 H. 6. *I. Serra al' tantum.*

Co. 10. 100. b. Plo. 68. And with this agrees the Book of 7 E. 4, 5. where one was in the custody of the Sheriff, by force of a Capias directed to him upon an Inditment of Trespass, and the party maketh an obligation to another (by the denomination of the Sheriff) upon such condition as the Statute prescribeth, (for the surety or security of the Sheriff) and there it is holden that the obligation is void, for that the Statute prescribes that the obligation shall be made to the Sheriff himself, and by the Name of his Office, and this is part of the essential form of the Statute. Dyer 119. Co. 10. 100.

Cromp. 206. a. 7 E. 4. fol. 5. Dyer 120. A Sheriff had one in execution for a great sum, and after the Sheriff took an obligation (of the party which was in execution, and of divers others) in his sons name to pay to him at a certain day, &c. and so let the prisoner go at large, this was holden to be an escape, and the bond clearly void; it was the Sheriff of Staffordshire his Case, Ann. 31 Eliz. as Master Crompton reporteth.

Ibid. And so it is where a bond is given to the Sheriff by a stranger for the inlargment of a prisoner, the bond is void. *Fait per estr*

Co. 10. 100. Plo. 69. a. But note, that this Statute of 23 H. 6. extends only to such obligations which any person being in the custody (or ward) of the Sheriff, do make unto him, and therefore Anno 34 Eliz. in an action of debt brought by D. Sheriff of B. against Burman upon an obligation, the Defendant pleaded this Statute of 23 H. 6. and shewed that one K recovered debt and damages against him, and pursued a Writ of Fieri facias against him, directed to the Sheriff of B. and that he made the obligation to the Plaintiff (being Sheriff) for the execution, and that the obligation was void by the Act; upon which the Plaintiff demurred; and it was resolved and adjudged, 1. That the obligation was not within the said Statute, for that the Statute extends only to such obligations which any being in his * custody do make unto him. 2. That the obligation was not void by the Common Law, whereupon the Plaintiff had judgment. *Sur fieri fac.*

* Mes icy le party ne fuit en son custody car fuit sur *Fieri fac.*

Wherewith also agreeth the opinion in Dyer fol. 119. a. that this Stat. of 23 H. 6. doth make void only obligations made (to the Sheriff, &c.) by prisoners, and persons arrested.

Co. 10. 99. b. And so in Beausage's Case (10 Jacobi Regis) the Sheriff upon a Fieri facias, took bond of the Defendant to pay the money in Court at the return of the writ, and it was resolved that such obligation was good, and not void by the Statute of 23 H. 6.

Co. 10. 100. a. The like judgment was given An. 28 & 29 Eliz. between Burwey and Kett, upon an obligation taken by the Sheriff, pro solutione pecuniæ debitæ Dominæ Reginæ, upon an extreat out of the Exchequer. *Sur estreat.*

Si le Vic. levy biens sur Fieri fac. *& apres vend eux al party, & prist obligation pur les deniers, cest obligation nest void* per Stat. 23 H. 6. per Curiam in Communi Banco. Mich. 37 Eliz.

Issint si Vic. Attache biens, & prist obligation pur eux. Ibid.

Ri. Bowes *Vic. del* Stafford *port dett sur obligation vers* Hiningham, *Et il plede in barr le Stat. de* 23 H. 6. *Et dit que un* Vernon *fuit in prison al suit le plt. &c.* Et sic in Executione existens *fait le dit obligation al pl.* pro deliberatione sua: *le plt. replia, que* Vernon fuit alarge, absque hoc quod fuit in Custodia sua tempore obligac. factæ. *Et un Jury esteant al Barr,* Egerton, *sollicit. move le Court que l'issue fuit Jeofail, Car non obstant que home ne fuit*

soit in Execution al temps del obligation fait, uncore si le obligation fuit fait pur son deliverance, ceo est deins ceo Stat. Et si ne soit accordant al ceo serra avoid, Come J. S. estant in Execution promise le Vic. pur fairet a luy un obligac. sil voet luy discharger. Et le Vic. luy lesser d'aler alarge, & donque il fait l'obligacion, &c. ceo est deins le Stat. car est fait pur son deliverance, & fuit le cause de son deliverance, Et ceo case fuit agree per Wray, Gawdy, *&* Fenner *Justic': Et sic n'est issue, si fuit in prison al temps del obligation fait, ou nemy.*

Tanfeild *al contrary, le Stat. est,* That no Sheriff, &c. shall take any obligation for any cause aforesaid, &c. of any person, nor by any person, which shall be in their ward, &c. *per queux parols* constat *que le obligation prist n'est deins le Stat. sinon que le person soit in gard,* Et sic *le esteant in prison est issuable;* Wray, Gawdy, Fenner *&* Clinch, *non obstant que obligacion prise d'un que est alarge, soit deins le Stat. per special matter monstre, &c. uncore quant celuy que plede le Stat. suppose que un in* Executione existens *fait l'obligation, ore le estant in Execution al temps est necessary & traversable, Et issue prise sur ceo est bon: per que le Jury fuit prise, & troveront pur* Ri. Bowes.

But if the Sheriff shall take an obligation of any person being in his custody or ward, then the condition of such obligation must be in substance according to the form prescribed by the Statute, or otherwise it will be void. 37 H. 6. f. 1.

Sans condic. And therefore in 37 H. 6. the Sheriff took a single obligation of one that was in his custody (who was bailable) and it was holden to be void, for that the obligation wanted the essential form prescribed by the Statute; for the condition therein prescribed (sc. for the appearance of the prisoner) was wanting, which is part of the substance. Co. 10. 100 Plo. 76. Dyer 119.

De que nemy est bailable. So in the same Book Moyle saith, that if the Sheriff had bailed one who is excepted in the said Statute, and not bailable, and had taken a single obligation, that it was void, which the rest of the Justices also granted; for by the exception it appeareth that it was not the intent of the Statute, that he should be bailed, and so the obligation is taken in other form than the Statute meant. 37 H. 6. fol. 1. Plo. 64. 67.

Et saver harmless. And by the opinion of Sir Edw. Coke, that as well in the former case of 37 H. 7. as in the principal case of Dive and Manningham, Plo 67. the obligation which was with condition to save the Sheriff harmless (when the Sheriff against the Law had bailed one which was not bailable) is against the Law, and void by the Common Law; wherewith agreeth Wiseman's Case, 15 El. Dyer 324. Co. 1. 100. b. Plo. 69.

Addition. Also if the Sheriff shall add to the condition of the obligation, that he shall be saved harmless against the King, and the Plaintiff, &c. this shall make all the condition void. Plo. 62. Co. 10. 100. b.

So if the Condition of the bond be, to save harmless, or to discharge the Obligee; Or to discharge, or to pay the charges or fees of the prisoner; Or to yield his body to prison at all times upon summons, &c. in these cases all is void. Dyer 118, 119.

So if the condition of the bond be, that the prisoner shall be always at the commandment of the Sheriff, as a true prisoner, &c. Or shall behave himself as a true prisoner (aswell within the Gaol, as without) until he shall be lawfully discharged. Dyer 323. Plo. 62.

One being in the Marshalsey for debt, the prisoner and an estranger did enter bond to the under Marshal, with condition to save him harmless of all Escapes, Actions, and suits touching the prisoner, and thereupon he let the prisoner go at large, and the opinion of the Court was that the obligation was void; And also that the under Marshal was

within the Case of the Statute of 23 Hen. 6. cap. 10.

Et nota *que coment touts les printed Statutes de* 23 H. 6. *sont, que nul Vicount, ne nul de ses Officers ou Ministers susdit, prender ascun obligation,&c. uncore les parolz del Estat. Escript sont, que nul Vic. ne nul del Officers ou Ministers, & nemy ses Officers*. Dyer 324.

Ibid. So if the Sheriff or Gaoler shall take an obligation of the prisoner, with condition to pay for his meat, or his drink, these are void. Plowd. 68. See hic Gaoler.

Co. 10. 100. b. So if the Sheriff shall add any other thing to the matter prescribed by the Statute, as to pay so much money for a horse, &c. such addition maketh all the obligation to be void, for that it is taken in other form (touching the substance of the matter) than is prescribed by the Statute; and with all this agreeth Master Plo. fol. 67, 68, 69.

Co. 10. 100. b. And if a Sheriff or Gaoler (for the ease and enlargement of any person who is in their custody, or ward) shall take a promise to save him harmless, although the Statute speaketh only of obligations with conditions, yet this is in the like mischief; and therefore promises shall be taken within the Statute of 23 H. 6. and within the equity of the words (any obligation) an assumpsit shall be taken; for Quando verba Statuti sunt specialia, ratio autem generalis, generaliter Statutum est intelligendum. See hic postea *Dabridgcourt's* Case. *A verbal promise.*

Dabridgcourt brought an action upon the Case against Smalebrooke, and counted that whereas the Plt. was Sheriff of the County of Warwick and a Capias ad Satisfac. came to him to take one Lane at the suit of the Def. the Def. desired the said Sheriff to make one Russell (who was the Def. friend) his especial Bailiff for the taking of Lane, and in consideration thereof, the Def. did assume and promise that if the said Lane did escape, that he would not take any advantage thereof against the Plt. whereupon the Sheriff made the said Russell his special bailiff, &c. and after the said Lane did escape, and for this the Def. charged the Plt. against his own promise and Assumpsit; whereupon he brought his action: The Def. pleaded Non Assumpsit, and it was found for the Plt. And in arrest of Judgment it was alledged that this Assumpsit is within the Stat. of 23 H. 6. in the same manner as an obligation is; and so void; Also that the Assumpsit was against Law, for the ground of it was to let Lane at large, which the Sheriff could not do. And in this Case Cooke agreed that an Obligation, and Assumption also, is void by the Stat. of 23 H. 6. where the party is arrested, but here this Assumpsit is before the party was arrested, and the Assumpsit was not made by the party himself. Wray Chief Justice said, that an Assumpsit was within the Stat. of 23 H. 6. aswell as an Obligation, but here this Assumpsit was not within the Stat. nor contrary to Law, For if the Sheriff shall make a Bailiff at the request of the party, reason will that the same party shall not charge the Sheriff for an escape suffered by the said Bailiff. Gawdy Justice was of the same mind, for that it was a benefit to the party. Clinch and Fenner also agreed thereto. And Fenner (who was made Justice the same term) said, that the Sheriff did take of every known Bailiff an obligation to save him harmless, wherefore it is great reason when he makes a special Bailiff at the request of the party himself, that the party shall not take advantage of this escape. And Judgment was given accordingly for the Plt. in Banco Regis ter' Hillar. 32 Eliz. Rotul. 371.

Also Fenner (in the former case) said, that if such an Assumption had been made to the Sheriff, to have one Bailiff who is a Bailiff General to the Sheriff, it had been void, for it had been no benefit to the party; but otherwise to have a special Bailiff (as in

this former case) for this doth advantage the party to have a more speedy Arrest made.

Also in the former Case it was said to have been adjudged, that where an Obligation is void by the Stat. of 23 H. 6. that in every such case, an Assumption or Promise shall also be void. And Wray said further, that if the Stat. makes an Obligation void, a fortiore it makes an Assumpsit void, which shall be contrary to the provisions of the said Stat. But the Assumpsit in the first case, he and all the other Justices held to be good.

By Montague Chief Justice, if more be inserted into the Obligation than for appearance of the party bound, all the Bond is void. Plo. 68.

And yet 21 Eliz. Dyer 364. there the condition was in the copulative, to appear and answer, and the Obligation holden good. Co. 10.101. b. Dyer 364.

The case there was this, a Sheriff having an attachment returnable coram Domina Regina & concilio suo, in camera stellata apud Westmonasterium in quindena Paschæ, ad respond' dictæ Reginæ & concilio suo de quodam contemptu, & ad faciend' & recipiend' ulterius, &c. doth arrest the party, and takes bond of him (for his appearance) indorsed with this condition, sc. that if he shall personally appear before the Queens Majesty and her Council at Westminster, in quinden' Paschæ, and then and there shall answer a contempt by him against the Queen and her Council committed, that then, &c. And the question was, Whether this bond and condition were good in Law or no, because the words (and then and there shall answer, &c.) were added to the condition, and so was more than the Statute of 23 H. 6. would warrant; And by the opinion of Dyer and Windham the obligation was good enough, for it was as much as to have said, then and there to answer (to a contempt, &c.) which had been good: And by this obligation no profit did accrue or grow to the Sheriff, nor to any other person, but was only to answer the Queen, &c. which was the intent of the Statute of 23 H. 6. yet Meade was of the contrary opinion: But afterwards Judgment was given for the Plaintiff, and so the Obligation holden and adjudged to be good, according to the Statute of 23 H. 6.

Also in the Kings Bench anno 27 Eliz. the case was this, Sir William Drury late Sheriff of the County of Suff. brought an Action of Debt upon an obligation of twenty pound, against A. B. who demanded Oyer of the obligation (whereby it appeared that the Defendant was only bound therein) and of the condition, which was that one More, whom the said Sheriff had arrested by force of a Latitat out of the Kings Bench, should appear in person at the day contained in the Writ, ad respond', &c. and pleaded the Stat. of 23 H. 6. and that the said obligation was taken in other form than the said Statute prescribed, &c. whereupon the Plaintiff demurred in Law: And it was objected that there were three variances from the form prescribed by the Statute, sc. one in the obligation, and two in the condition: In the obligation, for that the Plaintiff took but one surety, whereas the Statute prescribes reasonable surety of sufficient persons, in the plural number, having sufficient within the County, &c. in which case there ought to be two sureties at the least; and here was but one surety, and so against the words of the said Statute; and also against the intent of the Statute, for the more, and the better able that the sureties are, they will the sooner cause the party that is bailed to appear, and thereby Justice shall proceed with more expedition: And also in the condition, first the words are that the prisoner shall appear in person, whereas the words of the Statute are to appear generally, without these words in person, secondly, that he should appear at the day, &c. ad respond', where those words 27 Eliz.

(ad

(ad respondend') are more than the Statute prescribes, and so for these two cases the condition varied from the form prescribed by the Statute, and therefore the obligation was void: But it was resolved by Sir Christopher Wray, Sir Thomas Gawdy, and all the Court of the Kings Bench, that the said obligation was not void; for as to the first Objection, the words upon reasonable surety of sufficient persons, are added for the surety of the Sheriff, and therefore if he will take but one surety, it is at his peril, for he shall be amerced if the Defendant appeareth not; and therefore the Statute doth not make void the obligation in such case, for the branch of the Statute which prescribeth the form of the obligation, requireth that the obligation shall be made to the Sheriff himself by the name of his Office, and that the prisoners appear, in which clause no mention is made of the sureties, so that the meaning of the Statute was, that in as much as this was at the peril of the Sheriff, to leave this to his discretion, &c. to take one or more sureties for his indempnity; and peradventure it shall be better for him sometimes to take one which is sufficient, than two others; And although the sureties or surety have not sufficient within the same County, as the Statute mentioneth, yet the obligation is good enough, for these words of the Statute to this point, are rather for counsel and direction of the Sheriff, than by way of precept or constraint to him, and that for the safety of the Sheriff: But note, that if the Defendant cannot find two sufficient sureties, having sufficient within the same County, the Sheriff is not bound to let him to bail.

But one surety.

Nient suffic' deins Countie.

Co. 10. 100. a.

Ibid. And as concerning the two additions to the condition of the said obligation, more than is in the Statute, it was resolved, that there is a verbal difference in the form prescribed by the Statute, but no difference in substance and effect, for he that is bailed ought to appear in person; And so, and for the same cause, the other exception was not material, for he which was to appear, ought to appear ad respondend' & parum differunt, quæ re concordant.

Fitz. 25. c.

In an action of Debt brought by Bassett (a Sheriff, in Communi, Banco Anno 29 Eliz. Rotul. 1511.) against Ballard, upon an obligation made upon condition that Ballard should personally appear (before the Justices of the Common Pleas) at such a day, there to answer to such a suit as J. S. had against him; it was moved that this bond taken by the Sheriff was against the form of the Stat. of 23 H. 6. for that there was more inserted into the Condition, than the Stat. limits, or the Common Law enforced, for it had this word personally, whereas the Def. may well appear by Attorney, in the action, &c. and therefore the bond should be void by this Stat. And it was adjourned, and after Gawdy shewed a Judgment in the Kings Bench, upon the very point, upon a bond taken by Thomas Sackford (a Sheriff) of one Shutt (A. 29 Eliz. Rotul. 1512.) And Sackford brought an action of Debt against Shutt hereupon; and it was adjudged for the Plt. after much argument. Quære *si nul diversity soit perenter apparance sur Latitat, & sur auter brief. Car sur Latitat ne poet appeare per Attorney, sinon le plt. voet ceo admit; mes semble nul diversity, Car le Stat. ne parle sic, personally.*

And so note that Sheriffs (nor their Officers) ought to take no obligation for any cause or thing aforesaid (or by colour of their Office) of any person being in their custody or ward, but only to the High-Sheriffs themselves, and by the name of their Office, naming himself Sheriff in the obligation, and upon condition only that the party shall appear at the day and place in the Writ or Warrant specified, and if any obligation be taken by colour of their Office, in any other form, it

it is void by the Statute of 23 H.6. But for the sureties, their number, their sufficiency, and the sum wherein they shall be bound, all these rest in the discretion of the Sheriff, and his Officers, but yet at the peril of the Sheriff, if the Defendant shall not appear thereupon.

Regula. *Coment obligation prise in auter manner que le Statute* (de 23 H.6.) *prescribe soit void, uncore le party ne poit plede* non est factum, *mes avoider' ceo per plee, &c.* 7 E.4. fol. 5. Co. 3.59. & 5.119.

Ceo Statute de 23 H. 6. cap.10. *est forsque perticuler & special act, d'ont les Judges, ou Court, nest tenus, de prender notice,* ex officio, *sinon que soit plead per le party.* Dyer 119. Co. 4.76.

In dett sur obligation prise per Vic. pur apparance tiel jour, Le Def. dit que il appeare, &c. le Plt. replye que ne appeare, &c. Ceo serra trie per le Record, & nemy per pays; Car nest apparance sinon soit per matter de Record. M. 29 Eliz. in Banco Rs.

Tiel bonds doient estre sue per Vic. per nosme del Vic. ou auterment le brief abater. M. 29 Eliz.

Si Vic. prist obligacion pur apparance, & le obligor ne appeare, uncore si le Vic. ne soit amerce pur ceo que l'obligor ne appeare le Vic. ne poit suer cest obligation. Per Cur. Mich. 38 & 39 Eliz.

Nota, que le Vicount & ces officers, ne poient prender obligation de lour prisoner, forsque in petit number de Cases, car lour ability in ceo point est limit per ceo Statute de 23 H. 6. Plo. 68. a.

Et issint semble de obligations prise per le Vicount de ses officers, ou de ascun auter persons, colore officii, *si issint soit que le obligation est prise in auter forme que le Statut. limit.* tamen quære.

A prisoner that is sent to the Gaol for Felony, or suspition thereof, may in divers cases be bailed by the Sheriff; But that must be upon the Kings writ specially directed to the Sheriff for that purpose. Vide Fitz. 250. & 251. a.

A man indicted of trespass (or for any other like offence) before Justices of Peace, and thereupon committed to prison, may also upon the Kings writ be bailed by the Sheriff, to appear at the Sessions, &c. Fitz. 250. g. h.

If a man be sued or indicted, &c. whereupon a Capias, or an Exigent shall be awarded against him, and the party thereupon is arrested, or imprisoned, &c. yet upon a Supersedeas directed to the Sheriff, he is to bail the party, &c. Fitz. 236, 237.

If a man be bound in a Stat. Merchant payable at a certain day, and at the day he payeth part of the sum, and gets a Release (from the Conusee) for the residue, and yet after the Conusee sueth Execution, and taketh the body of the Conusor, &c. here upon a writ directed to the Sheriff (rehearsing the matter, &c.) the Sheriff may safely bail him. Fitz. 251. d.

And so in divers other cases, upon the Kings writ directed to the Sheriff to bail or deliver a prisoner, &c. the Sheriff ought to do as he is commanded by the writ.

CAP.

CAP. 97.

Obligations.

The form of a Bond for appearance.

NOverint universi per præsentes nos *A. B.* de *C.* in com' Cantebr' gen', *E. F.* de *L.* in comit' præd' Yeoman, & *H. T.* de *R.* in com' prædict. Yeoman, teneri & firmiter obligari *A. B.* milit' Vic' com' præd. in quadraginta libris bonæ & legalis monetæ Angliæ, solvend' eidem vicecomiti aut suo certo atturnato, execut', sive administrator' suis, Ad quam quidem solutionem bene & fideliter faciend', obligamus nos & quemlibet nostrum per se pro toto & in solido, hæred', executor', & administrator' nostros, & cujuslibet nostrum, firmiter per præsentes: sigillis nostris sigillat', dat' quarto die Decembris, anno Regni Domini nostri *Jacobi* Dei gratia Regis Angl',&c. decimo nono, & Scotiæ quinquagesimo quinto annoque Domini *1621*.

The Condition for appearance.

THe condition of this present Obligation is such, That if the above bounden A. B. do appear coram Domino Rege (if the writ be out of the Kings Bench) apud Westmonast. die Jovis proxim' post quindena Sancti Hillar' (or otherwise according to the return of the writ) but if the writ be returnable in the Court of Common Pleas, then the words in the condition must be for the Defendant to appear coram Justic' Domini Regis (apud Westmonast. in oct. Sancti Hillar', (or such other return according to the writ) to answer to C. D. in a Plea of Trespass (or Debt, as it is in the writ) that then this present Obligation to be void, and of none effect, or else the same to stand, remain, and continue in force, strength, and vertue.

Sealed and delivered to the use of the above-named Sheriff, in the presence of *A. R.* and *T. S.* (two witnesses at the least.)

Or thus in Latin.

COnditio istius Obligationis talis est, Quod si supra obligatus J. H. Compareat personaliter coram Domino Rege: Or coram Justic' Domini Regis, apud Westm' (à die Paschæ in 15 dies) ad respondendum A. B. de placito debiti vel detenc', aut compoti, juxta tenorem brevis Domini Regis præfat' Vic. inde direct'.) Quod tunc hæc præsens Obligatio vacua & pro nulla habeatur, Alioquin in suo robore permanere & effectu.

Upon a Warrant made or granted out upon a Capias utlagatum, the Sheriffs in some places do use to take of their Bailiffs a Bond, with Condition, to bring the Defendant to prison if he be arrested; which makes good execution of those Proces. And it were to be wished, that this were used in all Countries, and then there would not be so much Extortion and indirect dealing used by Under-sheriffs and Bailiffs to the

King and his Subjects as there is: For if they take any man upon a Capias utlagatum, they will not only take money of the Plaintiff, for to take the Defendant, but when they have taken him, for money they will let him go again; and they will alledge for a colour, that it is to reverse the Outlawry, which they have nothing to do withall; for the Defendant ought to be brought to prison, and there to remain until he hath reversed the Outlawry by the help of some Attorney, and not by the Sheriffs, Under-sheriffs, or other Officers; For no Under-sheriff, or Sheriffs Bailiff, &c. ought for their times to practice as an Attorney. Wilk. See hic postea titulo Sheriffs Officers.

Upon Replevin. De prosecutor le sute. Also upon all Replevins granted or made by the Sheriff, or his Officers, they must take a Bond of him to whom the Replevin is granted, for his appearance, and prosecuting of the suit, &c. Whereof see postea titulo County Court. Westm. 2. c. 2.

De Retor' les biens, &c. Also there is another Bond which the Sheriff or his Officers must take for the delivery of the goods or cattel replevied, if return shall be adjudged, &c. The form of which condition may be as followeth: Ibid.

Conditio istius Obligationis est talis, quod si supra Obligati A.B.& C.D. redeliberaverint supra nominato vicecomiti, omnia illa bona & catalla; & quamlibet inde parcellam per P. H. capt' & ratione cujusdam Repleg' per prædictum vicecomitem factum, præfatis A. B. & C. D. Repleg', si returna inde adjudicetur; Et præd' Vic' & executor' suos indempnem conservaverint, Quod tunc hæc præsens Obligatio vacua & pro nulla habeatur, Alioquin hæc præsens Obligatio in omni suo robor' permanere & effectu.

Or thus in English, as well for the prosecuting of the suit, as for the Return of the goods.

Aliter. The condition, &c. That whereas the within-named Sheriff by virtue of his Office, and upon the complaint of the within-bounden J. S. hath delivered and Replevied to the same J. two Horses and five Kine, which one W. T. late took and wrongfully withholdeth, as the said J. S. saith: If the said J. do pursue his action with effect against the said W. for the taking and withholding of the said Horses and Kine, and do make return of the same, if the return thereof shall be so adjudged by Law; And the said Sheriff, his heirs, executors and administrators shall acquit, discharge, and save harmless against our Soveraign Lord the King, and the said W. of and for all and every thing concerning the premises, That then, &c. Westm. 211.

A Condition to appear before the King and his Council, in the Star-Chamber.

The condition, &c. That if the within bounden J. S. do personally appear before the King and his most Honourable Council in the Court of Star-Chamber at Westminster (upon such a day) and so from day to day, and not to depart without Licence of the said Court, That then, &c.

A Con-

A condition to appear in the Common Pleas, *upon an* Exigent.

COnditio, &c. Quod si A. B. de, &c. in propria persona sua compareat coram Justic. Domini Regis apud Westm. a die Sancti Michaelis in tres septimanas prox' futur' post datum infrascript. Ad respondend' R. W. in placito debiti, secundum vim formam & effectum cujusdam brevis de Exigend' infranom' Vic. direct. Quod tunc, &c.

A Condition to appear at the Sessions of the Peace.

COnditio, &c. Quod si infra Obligatus J. S. in propria persona sua comparcat (quære *de ceo clause*, & reddit se tanquam prisonar' Vic. infranom') ad proxim' Session' Justic Pacis in Com Cantabr. proxime post festum, &c. proxim' futur' tenend' Ad respond' Domino Regi de diversis offensis unde indictatus est. Quod tunc, &c.

Alias. COnditio, &c. Quod si quædam A. W. Spinster, in propria persona sua compareat coram Justic. Domini Regis de Pace in Com. C. conservand' assignat. ad proximam Sessionem Pacis dicti Domini Regis apud C. (*ou le Shirehouse* ibidem) proxim' tenend' Ad respond' tam dicto Domino Regi, quam G. S. de placito transgress. & contempt. contra formam Statuti servient. * Et ulterius indempnes conservet infranominat. Vic. hæredes & executores suos, versus dictum Dominum Regem, & omnes alios quoscunque, de & super præmissis, quod tunc, &c. West. 260. *Mes quære de cel darein clause ou addition, ad not.* *

A Condition to be a true Prisoner.

The Condition, &c. That if J. H. Merchant of, &c. which now is in the Kings prison under the keeping of the Sheriff within named, as well by reason of a writ of our Soveraign Lord the King of the Statute of the staple containing the sum of one hundred pounds, &c. As also for certain other actions, causes, and suits on the behalf of R. S. &c. moved and commenced, be from henceforth a true and faithful prisoner, tarrying and remaining with the said Sheriff and his Deputy, till the same R. S. be fully at an end discharged and acquitted of the said action, and then content and pay to the said Sheriff, &c. all and singular costs, charges, fees and other duties, in such cases therefore accustomed to be paid, That then, &c. West. 210.

A Condition for appearance in the Kings Bench, *for the Peace.*

West. 270. COnditio, &c. quod si infra Obligatus J. I. compareat personaliter, in custod' infranominat' Vicecom', &c. coram Domino Rege (in octabis Sancti Michaelis proxim' futur') ubicunque tunc fuerit in Anglia, ad inveniend' tunc coram ipso Domino Rege sufficientem securitatem pacis Domini Regis, & de se bene gerendo erga ipsum Dominum Regem & cunctum populum suum, & præcipue erga H. C. juxta tenorem brevis ipsius Domini Regis præfat' Vicecom' inde direct'; Et interim pacem gerat, & dict. vicecomes hæred' & executor' suos erga Dominum Regem & cunctum populum suum, præcipue erga prædict. H. C. de & in omnibus concernent' præmissa indempnes conservet quod tunc, &c.

A Condition for appearance in the Kings Bench, *and good abearing.*

Conditio istius Obligationis talis est, quod si interius Obligatus J. L. compareat personaliter sub custodia infranominati vicecom' vel ejus deputat' coram Domino Rege in Octabis Sanct' Hillar' proxim' futur' ubicunque tunc fuerit in Anglia, ad inveniendum tunc coram ipso Domino Rege sufficientem securitatem de se bene gerendo erga ipsum Dominum Regem & cunctum populum suum, juxta tenorem brevis dicti Domini Regis præfat' vicecom' inde direct', & se bene medio tempore gerat, & dict' vicecom' & executor' suos erga Dominum Regem & cunctum populum suum, de & in omnibus concernent' præmissa indempnem conservet, quod tunc, &c. *West. 201.*

De ses officers. Also it is safe for the Sheriff to take good security of his officers, &c. from his Under-sheriff, Bailiffs and Gaoler, &c. And this security is commonly by Bonds or Covenants, the forms whereof, See hic postea titulo, Sheriffs Officers.

But these bonds are thought by some opinions to be void, or voidable by the Words of the Statute of 23 H. 6. cap. 10. That no Sheriff shall take any Obligation for any cause aforesaid, Or by colour of his office, but only in such form and sort as is prescribed by the same Statute, And if any Sheriff take any obligation in other form, by colour of their office, it shall be void: And therefore if the High-Sheriff shall take good Covenants by Indenture, from his Under-sheriff, Bailiffs and Gaoler, &c. with three or four good sureties, (all of them to Covenant joyntly and severally to and with the High-Sheriff for the performance of such Covenants as shall be meet to be had and made between the said High-Sheriff, and his said Officers, respectively) it may seem (without bonds) to be safer, than to trust wholly upon bonds which may be questioned, &c. And yet a bond of some good sum with sureties, from the Under-sheriff and other Officers, with condition for the performance of the Covenant comprised in such Indentures, will make them the more careful, &c.

And by others this Stat. of 23 H. 6. doth make void only such obligations as are made (to the Sheriff, &c.) by Prisoners, or persons arrested. See hic cap. 69. And that bonds taken by the Sheriff, or his Under-sheriff, Bailiffs, and other Officers, with condition to save the High-Sheriff harmless, are good.

Also by the Statute made 37 E. 3. cap. 2. where the Sheriff shall seize any lands or goods, &c. of one mans, which beareth the same name with another that is outlawed, the party grieved may have a Writ de Idemptitate Nominis, directed to the Sheriff (or other Officer:) but the party grieved must withall find surety before the Sheriff (or other Officer) to answer the King the value, &c. in case he cannot discharge himself. *Sur Idempt. Nominis.*

CAP. 98.

The Sheriff is to be Attendant upon the Judges in their Circuit.

NOte that the Counties of this Realm are divided into six Circuits. And two learned men are assigned by the Kings Commission to every Circuit to ride twice a year through those Shires allotted to that Circuit.

And the Judges of Assise allotted to every Circuit do use to make Proclamation aforehand a convenient time in every County of their coming into the County, and the time, and place of their sitting.

And at that time, all the Causes of the Country are brought before them by the parties grieved: And all the Prisoners in the Gaoles of those Shires; And all Controversies arising concerning life, liberty, lands, or goods.

And these Judges of Circuits have now five Commissions, by which they sit.

1. A Commission of Oyer and Terminer directed to them and to many other of the best accompt in the Circuit: But here the Judges are of the Quorum. And this is the largest Commission, giving them power to deal with Treasons, Murthers, and all manner of felonies and misdemeanors.
2. A Commission of Gaol-delivery: This is to the Judges only; And hereby they are to deal with every Prisoner in the Gaoles, for all Offences whatsoever.
3. A Commission to take Assises. } These two Commissions are
4. A Commission to take Nisi prius. } directed only to the Judges, for the speedy trial of Discords; and also to try Issues joyned at Westm. for the ease of the Country.
5. A Commission of the Peace, in every County in their Circuit: where all the Justices of the Peace are to attend the Judges.

1. Upon a Precept from the Judges of Assise, the Sheriff is to summon the Assises, and to return the same, &c. which see hic antea fol.

2. Also the High Sheriffs themselves of every shire are in person to attend upon the Justices or Judges of the Assises and Gaol-delivery in (and through) their Circuits, v. 27. and shall give their attendance for the due executing of the Commandments and Precepts of the said Judges in matters concerning the execution of their offices and ministration of Justice; and to take the charge of all prisoners committed to the prison, and for the execution of felons and other persons condemned to die, which Sentence he is to see Executed, And for the inflicting of punishment upon other prisoners according to Justice and the Judgment given upon them, and so far forth as appertaineth unto their office of a Sheriff.

Also all Stewards, Bailiffs, and other Ministers of any Liberties, or Franchises, &c. shall be attendant to the Justices of Assise, and Justices of Gaol-delivery, of the same shires, wherein such Liberties and Franchises be. And shall make due execution of all Proces to them to be directed for the ministration of Justice, within such Liberties and Franchises, 27 H. 8. cap. 24. vide hic cap. 121.

And the Judges of Assise may fine the High-Sheriff, and other the said Officers, if they fail either in their attendance, or for any other

 negli-

negligence, misbehaviour, or misdemeanour, in their Office, before them.

Yea, by some opinions, the Sheriff in every shire through the Circuit, is to attend in person, or by a sufficient Deputy allowed by the Judges, all the time that they be within the County, and the Judges may fine him if he fail, &c. Bacon, v. 26. Tamen aliter in usu.

The Sheriff also is safely to carry, convey and conduct unto every such place and places as shall be lawfully assigned, all prisoners committed to his charge, or custody, or to his Gaoler, for any manner of misdemeanour, criminal cause, or other offence whatsoever, there to receive their trial, judgments, and punishments for the same.

The command of the Judge (without writ, or warrant) is a sufficient warrant to do execution upon a prisoner condemned. Fi. 17. 3 H. 7. c. 3.

3. Every Sheriff (and all other persons) which have the custody of the Gaols (or of prisoners for felony,) ought to certifie the names of every of their prisoners which are in their custody for felony, to the Justices of the next general Gaol-delivery, in a Kalendar, upon pain of 5 l. for every default.

The form of such Kalendar may amongst other things be as hereunder followeth, or else they may make a Kalendar of the prisoners alone.

Kalendarium.

Cantabr.

KAlendarium de nominibus Justic' Pacis Domini Regis, Coronator' Senescall' Ballivor' libertat' & hundred', in com. prædict. Summon' ad essend' ad Assisas tenend' apud C. in Com. præd. die Lunæ in secunda septimana Quadragesimæ, Anno Regni Domini nostri *Ja.* Dei Grac', &c. Fidei Defensoris, &c. Ac de * nominibus prison' in Gaola prædict. existen'. * See hic Titulo Gaol.

Nomina Justic' Pacis.

A. B. miles & Baronettus. C. D. miles. E. F. Ar. &c.

Nomina Coronatorum.

G. H. I. K. &c.

Nomina Senesch. & Ballivor' Libert'.

L. M. N. O. P. Q. &c.

Or here you may shew specially, who is Steward, or Bailiff, of every Liberty or Franchise, as followeth:

A. B. Senesch. de Libertate de E.

C. D. Ballivus de Libertat. de F.

Et sic de cæteris.

Nomina ballivor' Hundred'.

R. S. T. V. A. C. B. D. &c.

Or thus:

R. S. Ballivus Hundred' de R.

T. V. Ballivus Hundred' de C.

Et sic de aliis Ballivis aliorum Hundred'.

J. S. repris.

J. N. capt' apud S. pro suspect' feloniæ.

Et sic de reliquis, &c.

Also they must shew by what Justice of Peace the Prisoner was committed, and for what cause.

And they must here shew, what prisoners have been bailed (by the Justices of Peace) after they were committed; And by what Justices they were bailed.

Nota,

Nota, *que Justices de Gaole delivery, (coment que lour Commission finie ove lour Sessions in mesme le pais, uncore) aprés que sont ales, ils poent commander le Vic. de faire execution, d'ascun que est reprie, ou de stayer ascun que ad judgment.* Dyer 205.

Mes si le Vic. stay de faire execution sur ascun prisoner que ad judgment sans commandment des Justices de Goale delivery, il ferra fine.

The Kings Writ under the hand of the Justice of Gaol-delivery, if it shall be sent to the Sheriff commanding him to take persons appealed (before the same Justice) by Provors who are in prison, the Sheriff in whose liberty the party so appealed shall be commorant or may be found, by vertue of such writ shall take such persons appealed, and shall cause them to be brought unto the Gaols where the Appellors be kept that appealed them, &c. Stat. 28 E. 1. for persons appealed.

Ibid. Also by writ from the same Justices to the Sheriff in whose liberty the felonies were done, of which such persons are appealed, the Sheriff shall cause an Enquest of the Country to come before the same Justices, unto the same places where the Appellors be kept.

Ibid. And the Sheriff in whose keeping such Appellors are deteined, shall receive those that be appealed by such Provors, when the parties appealed be taken, and brought unto the same Appellors.

The Justices assigned to hear and determine felonies (of the County where a man is indicted of felony) may award their proces or writ to the Sheriff of any other County, where the prisoner who is indicted is dwelling or abiding, to apprehend them, and the Sheriff of such other County is to execute the same according to the writ. Stat. 5 E. 3. c. 11. & 8 H. 6. c. 10.

CAP. 99.

The Sheriff also is to assist the Justices of Peace in his County, in divers Cases.

Riots. The Sheriff is to provide and make ready a fit, meet, and decent place, for the Justices of Peace, to keep and hold their general Quarter Sessions, as need shall require.

In some cases the Sheriff is to joyn with the Justices of Peace, as in case of Riots. See hic antea.

If the Sheriff, or Under-sheriff, shall not go and joyn with the Justices of Peace for the due execution of the Stat. of 13 H. 4. c. 7. made for the suppressing of Riots, Routs, and unlawful assemblies, &c. for the arresting, and imprisoning of such offendors, and recording their offence, and inquiry thereof, according to the same Statute, they shall forfeit one hundred pound.

And the Sheriff is to convey such offendors to the Gaol, at the appointment of the Justices of Peace.

13 H. 4. c. 7. 15 R. 2. c. 2. If the truth of the Riot cannot be found out upon the Inquiry, then within one month after the Inquiry, the Sheriff, or Under-sheriff shall joyn with the Justice of Peace in a Certificate of the fact and circumstances, &c. upon pain of one hundred pound. See hic antea fol.

Also if the said Riot be not found by reason of any embracery, or maintenance, &c. Then the Sheriff, or Under-sheriff (over and besides their former Certificate) shall joyn in another Certificate, of the names of such mainteinors, and imbracers, with their misdemeanors, upon pain of twenty pound. See antea hic fol.

In some cases the Sheriff is to attend the Justices of Peace.

If the Sheriff (or any other person of the County) do not attend upon the Justice or Justices of Peace, to go and assist him or them, to arrest such as shall make any forcible entries (into any houses, lands, or other possessions) or any forcible detainer thereof, he or they so offending, shall be imprisoned, and pay a fine to the King. 15 R. 2. cap. 2.

Forcible Entry.

13 H. 4. c. 7. P. force 5.

If two Justices of Peace (the one being of the Quorum) shall make their Precept to the Sheriff to summon the Sessions at a certain day and place, and shall command him thereby to return a Pannel or Jury from such a Venue (or place near where their Sessions shall be holden) before them, The Sheriff ought to perform this precept and commandment of the said Justices, notwithstanding any Supersedeas or other command or precept to the Sheriff awarded by any other Justices of Peace. Fitz. Just. of P. 10. Cromp. 122.

But if the King by his Writ of Supersedeas, shall command the Sheriff (or the Justices) that they shall not hold such their Sessions at that day and place appointed, this doth discharge the first precept of the Justices. Ibidem.

And yet if the Custos Rotulorum, (or two Justices of Peace, &c.) shall make their precept to the Sheriff to summon the Sessions at a certain place and day, Two other Justices (one being of the Quorum) may make another precept to the same Sheriff to summon and keep another Sessions upon the same day, at another place within the same County, as Mr. Cromp. saith, fol. 123. 124.

The Sheriff, (by himself or by his Undersheriff) ought also to attend the Justices of Peace at their general Sessions of the Peace, and that for the double duty that he beareth, The one as Sheriff, to return the precept, and to take the charge of prisoners, and to serve the Court otherwise, as he hath in charge by the Mandamus that is mentioned in the Commission of the Peace; The other, because the Sheriff hath also care and charge of the Peace, (Lambert 381.) and so is there to object against such persons as shall be committed by him.

The Sheriff is to summon 24 discreet men of the County to be at the Sessions to serve of the Great Inquest, &c.

He is also to warn all Coroners, Constables, Bayliffs of Hundreds, and Liberties, &c. and some of every Hundred for Jurors, to appear at the Sessions, &c. according to the form of the Precept directed to him for that purpose, which see hic cap. 47.

And if the Sheriff shall make default of Attendance at the Sessions of the Peace, the Justices of Peace may amerce or fine him for such his default.

In other cases the Sheriff is to execute the Proces, Precepts, Warrants, and other lawful commandments of the Justices of Peace. And therefore upon a Precept from any two Justices of the Peace (the one being of the Quorum) the Sheriff is to summon the Sessions of the Peace, and to return the same. See hic fol.

All Bayliffs and other Ministers of Liberties ought also to attend the Justices of Peace at their Sessions, and must execute their process, &c. 27 H. 8. cap. 25. See hic postea cap. 121.

If any Sheriff (or Bayliff of Franchise having return of the Kings Writ) shall slack and not make due execution of the Precepts of the Justices of Peace, to them directed for the returning of Juries to enquire of forcible Entries, &c. or Riots, &c. they shall forfeit to the King

201.

20 l. for every default, &c. See Stat. 8 H. 6. cap. 9. & 19 H. 7. cap. 13. hic cap. 87.

All Sheriffs, and Bailiffs of Liberties, must truly execute all such Proces as shall come to him or them from the Justices of Peace, before whom any presentment shall be made touching decayed Bridges, or annoyance of Bridges, upon pain to make such fine, as shall be assessed upon him or them by the said Justices. 22 H. 8 c. 5. P. Bridges 8.

If the Justices of Peace shall grant out any proces against any servants, or labourers, departing into other shires, the Sheriff must duely execute such proces upon pain of twenty pound. Stat. 2. Hen. 5. c. 4.

Also the Justices of the Peace (as well out of their Sessions, as from their Sessions of the Peace) may in many cases direct their Precepts, or Warrants, and other Proces to the Sheriff, Under-sheriff, Bailiff, or other like Officer for the administration of Justice, And the Sheriff and other his Officers are to execute the same, accordingly. See my Country Justice, pag. 303, 305, & 367.

By the Stat. 12 R. 2. cap. 10. it is ordained that every Justice of Peace shall take for his wages or costs 4 s. for every day of the Sessions, and 2 s. for his Clerk; which wages shall be levied of the Fines and amerciaments of the same Sessions, by the hands of the Sheriff: And that the Lords of Franchises shall contribute to these wages of the Justices, according to the quantity of their parts of the Fines and amerciaments.

After by the Stat. of 14 R. 2. cap. 11. it was provided, that the Estreats of the Sessions of the Peace shall be doubled (or Indented) by the Clerk of the Peace, and that the one part thereof shall remain with the Sheriff, and the other part thereof to be delivered to the Barons of the Eschequer, And the names of the said Justices of Peace, and the number of their days of sitting at their Sessions shall be written in the same Indenture, to the intent that the Sheriff may know to what Justices he ought to pay the wages of the Sessions, and to whom not.

And by the same Stat. it is further ordained, that neither Duke, Earl, Baron, or Baronet, shall have or receive any wages, for the time of their Sessions, or for the said Office.

Note, that if a man do forfeit a Recognisance for the Peace, (to the King) because he kept not his day of Appearance at the Sessions; Or if the Recog. be forfeited for any breach of the Peace; these forfeitures are not liable to the payment of the said Justices wages.

Also the Issues returned upon Jurors, are not liable to the payment of the said wages: But if the Jurors who should have been upon the great Enquest do make default of appearance, for the which they be amerced, of these amerciaments the said Justices wages may be levied, although there were no Inquisition made at the same Sessions.

The said wages of the said Justices of Peace, ought also to be levied of the Fines and Amerciaments of the same Sessions, and not of any other Sessions holden either before or after.

And yet if a man be indicted at one Sessions, and at the next Sessions, or at any other Sessions after, he maketh his Fine, this Fine shall be liable to these wages of those Justices before whom the said Indictment was taken.

The Justices of Peace may have their action of Debt against the Sheriff for their said wages being unpaid.

And the Lords of Franchises shall be contributary to the said Justices wages, &c. where the Lord of the Franchise hath the Fines and Amer-

Amerciaments of his tenants, or of the inhabitants of such Towns, &c. there such Fines and Amerciaments shall be rated proportionally, and the Sheriff may detain and keep in his hands, so much thereof, when the Lord of the Franchise demands the same in the Exchequer: But if the Lord shall levy the same by his Officers (as he may by the Kings grant) then the Justices of Peace are to be payed by the Lord himself, &c. Cromp. 177.

The Justices of Peace, by their Commission have power to enquire de quibuscunque vicecomitibus, ballivis, Custodibus Gaolorum, & aliis Officiariis, qui in Executione Officiorum suorum (concerning matters belonging to the Justices of Peace to Enquire of) indebite se habuerunt, aut remissi, vel negligentes fuerint: And to hear and determine the same, according to the Laws and Statutes of this Realm.

CAP. 100.

The Sheriff is to execute the Precepts of Commissioners of Sewers.

The Commissioners of Sewers have authority to make and direct Writs, Precepts, Warrants, and other Commandments, to all Sheriffs, Bayliffs, and all other Ministers and Officers, as well within Liberties as without, before the said Commissioners or six of them, at certain daies, times, and places to be returned, &c. 23 H. 8. c. 5.

Sheriffs shall return and cause to come before the said Commissioners (at such days and places as they shall appoint) such and so many Jurors, sc. honest and lawful men of their Bailiwick or Shire, (as well within liberties as without) as shall be expedient for inquiry. Ibid.

All other Ministers and Officers, as well within liberties as without, shall be attendant unto the Commissioners of Sewers in and about the due execution of their Commission. Ibid.

If any Sheriff, or other Officer, shall be negligent in the due execution of the premisses, the said Commissioners may (as it seemeth) punish them by distress, fines and amercements, or otherwise, as to the said Commissioners, (or six of them) shall seem expedient, &c. Ibid.

And by the Statute made 7 Jacobi Regis, All Sheriffs, (Bailiffs, Officers, and other the Kings Ministers whatsover) within the Counties of Norfolk and Suffolk (as well within liberties as without) shall from time to time be attendant, aiding and assisting to the Commissioners of the Sewers, and to every six or more of them; for and concerning the returning of the Juries before the said Commissioners; as also for and concerning all such other things as shall concern their several offices and places respectively, in or about the execution of all things in the said Act contained; upon pain to forfeit such pains, penalties, fines, and sums of money as shall be set or imposed upon them, by any six or more of the said Commissioners, &c. which said penalties, &c. shall and may be levied, by distress, sale of goods and imprisonment, &c. and shall be imployed and disposed of, in and about the preservation of the Fen-grounds, and draining of the waters there. 7 Jac. c. 20.

The

The Sheriff also to execute the Precepts of other Commissioners.

SHeriffs, or their sufficient Deputies, shall at their own proper costs and charges give their diligent attendance upon all Warrants and Precepts directed to them from Commissioners, and other such Officers or persons as shall have authority to write to the Sheriff for any manner of service, whatsoever by the Laws of this Realm ought to be done by the Sheriff: And shall make such return thereof, as the Law, or need shall require.

As the Commissioners upon the Statute of Bankrupt (made 13 El. cap. 7.) may cause the lands, tenements, annuities, offices, and goods, &c. of Bankrupts, to be viewed, rented, and appraised unto the best value they may, and then to make sale thereof, &c. And for the appraising of such lands, &c. the said Commissioners (ex officio as it seemeth) may make and direct their Precept or Warrant to the Sheriff, for the returning of a Jury before them, for appraising and valuing thereof: And such Commissioners (may as it seemeth) set a fine upon the Sheriff for not returning such a Jury before them, tamen hoc quære.

See Fitz. 119. f. A Writ of Attendance directed to the Sheriff, by Commissioners assigned to take an account, &c. and to make return of a Jury before them the said Commissioners.

Also Fitz. 257. d. A writ awarded to the Sheriff, to return a Jury before Commissioners (assigned to enquire of the age of the Kings Ward) at a certain day and place to be appointed by the said Commissioners, by their Precept and Warrant made to the same Sheriff.

Sheriffs ought to obey and execute all Precepts and reasonable Requests made to them by Commissioners for the Subsidy, for the Execution of the said Commission, so far as to the Office of the Sheriff belongeth to do. See the Statutes of grants of Subsidies.

If any under-Collector for the Subsidy cannot levy the sums comprised within his Estreats, &c. the Commissioners for the Subsidy may direct their Precept to the Sheriff (or other Officer) to distrein such person indetted, his executors, administrators, fermors, and assignees, &c. And for want of distress to arrest and attach the body of such person indetted, and to keep him in prison without bail until he hath paid the said sum, &c. And the Sheriff to whom such Precept shall be directed by the said Commissioners, ought to execute the same. Ibidem

The Sheriff in some things is to execute the Precepts of Escheators.

NOte that Escheators by the Common Law may make and direct their Precepts or Warrants to the Sheriff, for the returning of Juries before them; and may also assess and set a fine upon the Sheriff, for not returning of a pannel or Jury before them, &c. 7 H. 6. 12. Br. Fines pur Contempts 18. And this Escheators might have done by the Common Law.

And yet for that Escheators for their private gain used to take Enquests

quests (to enquire before them, as well by virtue of the Kings Writs, as by force of their Offices) favourably and not duly, by people not impannelled nor returned to them by the Sheriffs of the Countries, to the grievance of the Kings Subjects, &c. Therefore by a Statute made 8 H. 6. c. 16. it was Ordained, That no Escheator or Commissioner shall take any Enquest, but of such persons or people as he returned and impannelled by the Sheriff, in the County within which he is Escheator or Commissioner.

By the Statute 34 H. 8. every of the Sheriffs within the Counties of Wales, shall have power within their Sheriffwicks, as Sheriffs in England, and shall accomplish and execute all the lawful commandments and precepts of the Justices, &c. and of Escheators in all things appertaining to their offices and authorities. 34 H. 8. c. 26.

The Sheriff in some Cases is to execute the Precepts of Coroners, &c.

NOte also that Coroners by the Common Law may make and direct their Precepts and Warrants to the Sheriff, for returning of Juries before them; And may also Assess and set a fine upon the Sheriff for not returning of a Pannel or Jury before them, &c. 7 H. 6. 12. Br. Fines pur Contempts 18.

By the Statute made Anno 34 H. 8. it was Ordained, That every of the Sheriffs within the Counties of Wales, shall have full power within their Sheriffwicks, to do as Sheriffs in England; and shall accomplish and execute all the lawful commandments and precepts of the Justices, &c. and of Coroners, in all things appertaining to their offices and authorities. 34 H. 8. c. 26.

By the Statute made An 3 E. 2. Sheriffs shall have Counter-Rolls with the Coroners, as well of Appeals, as of Enquests, of Attachments, Abjurations, Utlawries, and of other things which to that office belong. Stamf. 64. & Fitz. Coron. 186. 3 E. 1. c. 10. P. Coroners. 3. & 16.

And to this purpose Master Bracton lib. 2. de exceptionibus ad Appella, saith thus, Est aliquando dissentio in recordo faciendo, inter Coronatores & Vic', cum uterque debeat habere suum Rotul', in quibus quandoque varia continen', quandoque Concordant. Et habent Record' quandoque Coronat' per se sine Vic', ut si Vic' mortuus fuerit, vel amotus, & rotuli non inveniant'. Si vero Rotulus Vic. discord' à Rotulis Coronat', & rotuli Coron' conveniunt, tunc eorum stabit' recordo, quia Rotulus vicec' nihil operat' nisi ad testim'. Et quid si rotulus unius Coron' discord' à rotulis aliorum, cum plur' fuer'? standum est plural'. Si autem non sunt nisi duo Coron', & discord', tunc stabit rotulis ipsius cum quo concordat rotulus Vic'. Si autem sunt ibi quat' Coronat' & duo dissent' à duob', nec appareat Vic' qui Rotul' habet ad testific', tunc stabitur illis duob' qui cum Appell' conven', &c. Stamf. 83.

Again Master Bracton libro 3. tit. de Corona, saith thus, Cum quis alium appellaverit de pace, & plagis, videre debet Coronator plagas illas, & illas mensurare cujus sunt longitudinis, & cujus profunditatis, sive facta fuerint in Capite, sive alibi, & quibus armis; Et hæc omnia faciet Irrotulari cum testimonio vicecom' si præsens fuerit in Inquisitione facienda, vel saltem in Com. si Appellum factum sit in Comitatu.

Also

Also upon a fugam fecit presented before the Coroner, the goods being seised by the Sheriff, ought to be prised by an Enquest, and the aprisement to be Inrolled by the Sheriff and Coroners, &c. Staunf. de Prærog. fol. 47. d.

Mag. Chart. cap. 17. But no Sheriff, Coroner, or any other Bayliff of the Kings shall hold pleas of the Crown: sc. they shall not hold pleas of any felony, nor of any lands (or other Real things but by a writ of Justicies.) Nor of any trespass vi & armis, &c. And yet the Sheriff, or Coroner may enquire of the death of a man, and of other things belonging to their Offices. See hic antea fol. & hic postea cap. 107.

The Clerk of the Market also (who is an ancient Officer to see that all weights and measures be according to the Kings standard in the Exchequer,) may hold a Court, and make his Proces or Precepts to Sheriffs (and Bayliffs of Towns) to return Juries before him, at a certain day and place by him to be appointed, by which Juries he may enquire of things incident to his Office. Cromp. *Author des Courts* fol. 22.

CAP. 101.

The Sheriff in some Cases is to Assist the Ordinary.

The Sheriff by his oath, is bound to do all his power and diligence to destroy and make to cease all Heresies called Lollaries or Lollards within his Baliwick or County.

Also the Sheriff (being required) is to aid and assist the Ordinary, and Comissary, for the suppressing of Heresies within his County.

Note, that this part of the oath which the Sheriff taketh, for the suppressing of Heresies, seemeth to be by force of the Statute 2 H. 5. c. 7. which Statute is since repealed by the Statute, 1 E. 6. 12. & 1 Eliz. 1.

Now concerning that Stat. of 2 H. 5. cap. 7. made against a sect of Hereticks (so then termed) called Lollards; the Stat. it self is not only repealed as aforesaid; But the persons then called Lollards by the Papists were indeed the true Professors of the Word of God, as appeareth in Mr. Fox his Book of Martyrs, pag. 540. So that the Oath of the Sheriff in that behalf were fit to be amended.

For the Papists taking advantage thereof write as followeth; That Lollards was the vulgar name of Wickliffs Followers, and therefore the Sheriffs Oath to persecute Lollards, King Edward the Sixth, Queen Elizabeth, and King James would not have suffered, Nor the Protestant Sheriffs would take such an Oath, if they accounted Wickleffists Protestants, thus say they, Pr. 440.

Master Birckbeck in his Book called The Protestants Evidence, part 2. pag. 85, 86. saith, that the Lollards were a company of true and godly professors: And that they were so called from one Raynard Lollard, who was burned in Germany for Religion and opposing the Pope.

How far the Sheriff was in former times, to aid the Ordinary for the suppressing of Heresies, and punishing Hereticks. See Fitz. 269. d. & Br. titulo Heresies.

But now the Statutes made against Lollards or Hereticks (as they were termed) sc. the Stat. 5 R. 2. c. 5. 2 H. 4. c. 13. 2 H. 5. c. 7. &

25 H. 8. c. 14. &c. stand all repealed by the Stat. made 1 E. 6. c. 12. And therefore at this day, a man before he shall be adjudged an Heretick, must be convicted of Heresie, by the Archbishop, and all the Clergy of that Province, sc. by a Provincial Synod, and must abjure thereof, and after Abjuration must fall into a relapse of that or some other Heresie, and be newly convicted, and condemned by the Clergy of that Province, in their general Council of Convocation, And yet after such conviction and condemnation, the Ordinary ought not to deliver him to the Lay-power, or Sheriff, to be burned, without the Kings Writ purchased and had therefore: whereas before (by the Statute 2 H. 4. c. 15.) every Bishop within his Diocess, might have convicted, abjured, and condemned a man of Heresie; And upon the Bishops Warrant, the Sheriff ought to have burned him, and that without the King's Writ.* Fitz. 269. d. Br. Heresie.

And quære what the Sheriff at this day may do, for the destroying, or suppressing of Heresie, more than to execute the Kings Writ, for burning of such as shall be convicted and condemned, as aforesaid.

But now this Writ de Hæretico Comburendo is taken away by the Statute made in 30 Ca. 2. Regis.

CAP. 102.

The Sheriff is to Proclaim certain Statutes, &c.

Statute of Winch. Every Sheriff in England ought in person four times in every year, to proclaim the Statute of Winchester (made 13 E. 1. against Homicides, burning of Houses, Robberies, and other felonies) within every Hundred of his Bailiwick; and in all Fairs and Markets by his Bailiffs (as well within Liberties as without;) And this is parcel of his oath, and is by force of the Statute made anno 7 R. 2. c. 6. and the purpose and intent thereof was, that the offendors should not be excused by ignorance; but these Proclamations are not made at this day. Vide Dr. St. 146, 147. 13 E. 1. c. 1. 28 E. 1. c. 17

Statutes of Purveyors. Also every Sheriff ought to proclaim all the Statutes and Ordinances made of Purveyors (not repealed) four times in his year, through his Bayliwick, upon pain of 5 l. But it seemeth the Sheriff is first to receive the said Statutes, together with the Kings Commandment, for doing the same, and then he ought to proclaim them accordingly; and he ought then also to deliver the same to his successor by Indenture, for him to proclaim the same upon the like pain. 1 H. 6. c. 2. 20 H. 6. c. 8.

Unlawful games Sheriffs shall make Proclamation four times in the year, sc. every quarter once, in every Market to be holden within their Counties, of the Statute provided against unlawful Games, and for maintenance of Archery: but it seemeth that none of these three former Statutes as for the Proclamations are now in use. 33 H. 8. c. 9.

Rates for wages The Sheriff upon receit of any Proclamation printed, and sent down by the Lord Chancellor, &c. or upon receit of any rates of wages made by the Justices of Peace of that County, and ingrossed in Parchment under their hands and seals for the rates of wages of servants and labourers, &c. shall forthwith cause Proclamation to be made of the several rates so made, in every Market Town within his limits (or at least in so many places within their authorities as shall be convenient;) The same Proclamation to be done in open Market, and to be fixed upon some post, in some convenient place of the Town. 5 Eliz. cap. 4. 39 Eliz. c. 12. 1 Ja. c. 6. & 29.

Hawks. If any findeth a Hawk that is lost, he must presently bring the same 34 E. 3. c. 22. 37 E. 3. c. 19.

to the Sheriff of that County (where it is taken up,) and the Sheriff must make Proclamation, in all the good Towns in the County, that he hath such a Hawk in his custody, and if the Lord and owner which lost the same Hawk, or any of his servants come to challenge it, and proveth reasonably that the same is his Lords or Masters, he is to pay for the costs, and to have the Hawk again; and if none come within four months to challenge the Hawk, then the Sheriff shall have the Hawk, making gree to or with him that did take up the Hawk, if he be a simple man; and if he be a Gentleman, and of estate to have the Hawk, then the Sheriff is to deliver him the Hawk, taking of him reasonable costs for the time that he had him in his custody, & reasonable allowance for the keeping thereof.

Proclamations to be made by the Sheriff.

31 El. cap. 3. For avoiding of secret summons in real actions, after summons upon the land, and fourteen days at least before the day of the return thereof, the Sheriff shall make a proclamation of the summons upon a Sunday, immediately after Divine Service and Sermon, if any Sermon there be, and if no Sermon there be, then forthwith after Divine Service, at or near to the most usual door of the Church or Chappel of that Town or Parish where the land whereupon the summons was made doth lie. And that Proclamation so made as aforesaid, shall be returned together with the names of the summoners. And if such summons shall not be proclaimed, and returned, according to the tenor and meaning of this Act, then no *Grand Cape* to be awared, but an alias and pluries summons, as the case shall require, until a summons and proclamation shall be duely made, and returned, according to the tenor and meaning of this Act, 31 Eliz. 3. *Summon. in Real. actions* *Returned*

4 H. 8. cap. 4. Also for the avoiding of secret Outlaries, &c. upon every Exigent where Writs of Proclamation are to be awarded, the Sheriff of the County to whom any such Writ of Proclamation shall be directed, before any utlary pronounced, shall make three Proclamations within his County, at three several days (two of his Proclamations to be made in full Court of his County or Shire-Court, And the third Proclamation to be made at the general Sessions in those parts where the party defendant is supposed to be dwelling, &c.) that the party yeld his body to the Sheriff of the County to whom such Exigent is awarded, so that the Sheriff may have the body at the day of the return of the Exigent to answer the plaintiff: But now by the Statute of 13 Eliz. one Proclamation is to be made in the open County-Court, another at the general Quarter-Sessions of the Peace, and the third at or near the most usual Church-door of that Town or Parish where the defendant shall be dwelling at the time of the Exigent awarded, and upon a Sunday immediately after Divine Service (and Sermon, if any be) and the same (third proclamation) to be made one month at the least before the quint' exact', by virtue of the said Writ of Exigent, and that all Utlaries had and pronounced, and no Writ of Proclamation awarded, or not returned according to this Statute, shall be utterly void. *upon utlary* 31 El. c. 3. Exig' 13. *1. In the County. 2. At Sessions. 3. At ostium Ecclesiæ.*

1 E. 6. 6. 10. 5 E. 6. c. 26. P. Exig' 6. Also whensoever any Writ of Exigent shall be awarded (in any action or suit in the Kings Bench, or Common Pleas) against any person dwelling in Wales, Lancashire, or Cheshire, one Writ of Proclamation shall be also awarded, &c. and every Sheriff (of every of the said Counties) to whom any such Writ of Proclamation shall be directed, *Wales, &c.*

rected, shall make proclamation of the said Writ of proclamation, according to the tenor of the same, and shall make true return of the same, according as the same Writ shall require.

Also by another Statute made anno 31 El. Writs upon proclamations, and Exigents, against any person dwelling within the County Palatine of Durham, shall be directed to the Bishop (or Chancellor) of Durham, &c. And the said Bishop, &c. shall by his Mandate directed to the Sheriff of the said County Palatine, cause proclamation to be made of the same writs of proclamation, according to the tenor of the same; and shall make true returns of the same into such Courts as the tenor of the same writs of proclamation shall require. 13 El. c. 9.

All Utlaries pronounced against any person upon any such Exigent awarded against any person dwelling within any of the said Counties of Wales, Lancashire, and Cheshire, as also within the said Bishoprick or County Palatine of Durham, and no writs of proclamation awarded in form aforesaid, or not returned as aforesaid, shall be clearly void, and of none effect. P. Exigent. 6. & 15.

Also if the Sheriff shall not duly execute and make true return of such writs of proclamation, &c. he shall be amerced at the discretion of Justices. 6 H. 8. c. 4. P. Exigent. 5.

And the Sheriffs of every the said Counties of Wales, Lancashire, and Cheshire, as also the Bishop or Chancellor of Durham, &c. which shall not make true return of every such writ of proclamation to them directed, &c. they shall lose for every such default v l. the one half to the King, the other half to any person which will sue for the same. 1 E. 6. c. 10. 5 E. 6. c. 26. 31 El. c. 9. P. Exig. 8. & 17.

Averment upon utlary. If the Sheriff shall not make all these proclamations in case of Utlary, according to the statutes, &c. yet by the Common Law the party being outlawed should not have averred this against the Sheriffs return, (sc. to say that there was but one, or two proclamations made by the Sheriff, &c. or to say, that the Sheriff made no proclamation at the Church-door, or Sessions, &c.) but in such cases the party so unduly outlawed, should have had his Action of the Case against the Sheriff, and so recovered his damages, &c. See the opinion of Keble 10 Hen. 7. fol. 23. & Br. Action sur le Case 122. 10 H. 7. f. 23.

But now by the words of the statute of 6 H. 8. cap. 4. All Utlaries had contrary to the same statute shall be avoided by averment without suing of any writ of Error. 6 H. 8. c. 4.

And by the Statute 31 Eliz. cap. 3. in fine before any allowance of any writ of Error, or reversing of any Utlary, shall be had by plea or otherwise, through, or by want of any proclamation to be had or made, according to the form of this Statute, the Defendant and Defendants in the original action shall put in bail, not only to appear and answer to the plaintiff in the former suit, in a new action to be commenced by the said plaintiff for the cause mentioned in the first action, but also to satisfie the condemnation, if the plaintiff shall begin his suit before the end of two terms, next after the allowing the writ of Error, or otherwise avoiding of the said Utlary. 31 El. c. 3.

Upon an Appeal, or Inditment, against any person dwelling in a foreign County, before any Exigent awarded, immediately after the first Capias returned, another writ of Capias shall be directed to the Sheriff of the County, whereof by the said Inditement the party is supposed to be, upon which second Capias, if the Sheriff cannot find the party within his County, Then the Sheriff shall make proclamation in two Counties (before the return of the same writ) that the party so Appealed or Indicted shall appear before the Justices, &c. where he was so Indicted

dicted or Appealed, at the day contained in the said last writ, to answer the matter, &c. 8 H. 6. cap. 10. And if the party appear not thereupon, and that be returned by the Sheriff, then the Exigent shall be awarded; and every Exigent awarded, or Utlary pronounced upon any such Indictment, &c. against this form, shall be void. Ibid.

Upon a writ de Excom' Capiendo, if the Sheriff returneth Non est inventus, then shall there be awarded a Capias with a proclamation therein contained, upon the receit whereof, the Sheriff shall in the full County Court (or else at the general Assises and Gaol-delivery, Or at a quarter Sessions for the peace to be holden within the same County) make open proclamation, ten days at the least before the Return, that the party or parties named in the said writ, shall within six days next after such proclamation yield his or their bodies to the Gaol of the said Sheriff, there to remain according to the tenor of the first writ de Excom' Capiendo. And if the Sheriff shall thereupon return that the parties have not yielded their bodies accordingly, thereupon still such proces shall go out, and the Sheriff shall make the like proclamation, until the party yield himself. 5 Eliz. cap. 23.

If any Riot, Rout, or unlawful assembly of people shall be, and that the same, or the truth thereof, cannot be found by the Justices of peace upon their Enquiry, Then within one month the said Justices and Sheriff (or Under-sheriff) shall certifie into the Kings Bench, &c. the whole fact, &c. (ut hic cap. 4.) And if the offendors do not appear in the Kings Bench upon the first proces, Then another writ shall be directed to the Sheriff to take the Offendors, and to bring them into the said Court, &c. And if they cannot be found, Then the Sheriff shall make proclamation in his full County Court next ensuing the delivery of the said second proces, that the said Offendors be before the King and his Council in the Kings Bench, Or in the Chancery in the Vacation, within three weeks then next following, And if the offendors come not then in, and that the proclamation be made and Returned, the Offendor shall be convicted and attainted of the Riot, &c. 13 H. 4. cap. 7.

7 H. 4. c. 15. Sheriffs (at the next County holden after the delivery of the Kings writ) shall make proclamation in their County Court, of the day and place of the Parliament, &c. so that all interessed may attend to the election of the Knights of the Parliament, &c. See hic antea fol. *Of the Parliament.*

23 H. 6. c. 11. Sheriffs when they have received the Kings Writ for the levying of expences of the Knights of the Parliament, at the next County Court, they ought to make proclamation, that all parties interessed be at their next County, to assess the said wages, &c. See hic antea tit. Knights of the Parliament.

In the Writ of Admeasurement of Dower, as also in the Writ of Admeasurement of Pasture, when the suit is come to the grand distress, days shall be given, within the which there may be holden two Counties, at the which open proclamation shall be made, that the Defendant shall appear at the day contained in the Writ, to answer the Plaintiff, at which day, if he do appear, the suit shall proceed betwixt them, and if he do not appear, and the proclamation be in form aforesaid testified by the Sheriff, Admeasurement shall be made by default. Westm. 2. 13 Ed. 1. 7. Fitz. 125. h. 126. c. *Admeasurement de Dower*

In breif de Admeasurement de Dower, ou Pasture, le Proces ore (per le Stat. de Westm. 2. cap. 7.) *est Summons, Attachment, & un grand Distress, in quel duex Proclamations serra faits (sc. la serra jour done devant que le breif soit retorne, que deux Countyes poent estre tenus, sc. perenter le*

le date del breif & le Retorne de ceo, Et in chescun County un Proclamation serra fait, que le Def. vener & monstre pur que Admeasermeut ne serra fait, &c. Vide hic cap. 49. & 113.

In breif de Mesne, le plt poet aver Summons, Attachment, & le grand Distress, que avera jour de retorne per tiel temps, que deux Countys poent estre tenus, Et in chescun County le Vic. fera un Proclamacion, que le def. (sc. *le mesne*) *viender de responder al plt* (sc. *de acquite le tenant, &c.*) *Et sil ne vient, & le breif soit retorne, &c. donque il serra forejuge,* sc. *le tenant serra touts temps enapres tenant al Signeur paramount, come le mesne fuit, & per mesme les Service.* Fitz. 137. b.

Nota, que in brief de Mesne, Et in breifs de Admeasuremeut, ilz navera forsque deux Countyes, & deux Proclamations: Mes in breif de Gard, ils averont 3. Countyes, & 3. Proclamations.

Auxi nota que sont divers manners de actions de Gard. sc. *breif de* { *Droit de Gard. / Ejectment de Gard. / Ravishment de Gard.* }

Et dicitur que les breifs de Droit de Gard, & de Ejectment de Gard fuer al Common Ley, devant ceux statuts, Et pur ceo sont appell de Communi Custodia: *Mes le breif de Ravishment de Gard est done per le stat. de* Westm. 2. cap. 35. Fitz. 139. 1. *que devant fuit forsque Trespass.*

Mes al Common Ley, in breif de Droit de Gard, & in breif de Ejectment de Gard, ils n'averout auter proces forsque Summons, Attachment, & Distress infinite, & issint voil delayer les gardians infinite, &c. Sed ore plus hastife remedy est done per les statuts, sc. *que in ceux deux plees (de droit de Gard, & de Ejectment de Gard) le party avera Summons, Attachment, & un grand Distress, & si le def. ne vient al grand Distress, que le plt avera un auter breif Retornable cye longe temps, que 3. Countyes poent estre tenus; Et in chescun County Proclamation serra fait, & le breif serra lye un faits, &c. Et si le def. ne veigne, &c. il serra forejudge de son Gard, &c.* Fitz. 143. 5. & Fitz. Retor. de Vic. 41.

Et le Vic. causer le breif chescun foits destre lye in plein County, & auxi le Proclamation destre fait in plein County.

Communi custodia. When any suit dependeth between parties for the wardship of an heir, or land, or both, by the common Writ de Communi custodia, Summons shall be made, &c. and when they have passed to the great Distress, there shall be a time given, wherein there may be holden three Counties at the least, in every of which Counties there shall be open proclamation made, that the deforceor shall appear in the common place at the day contained in the Writ, to answer the Plaintiff, at which day if he do not appear, and the proclamation be so testified, the first, second, and third time, judgment shall be given for the Plaintiff, saving the Defendants right, if he will at another time defend the same; In the same manner it shall be done in an action of Trespass, when any man complaineth himself to be eject from such wardships. Westm. 2. 13 Ed. 1. 35. Vide stat. de Marl. cap. 7. 52 H. 3. 7. 13 E. 1. c. 35.

Ejectione custodiæ. This stat. of Marl. 52 H. 3. cap. 7. is in these words, If the Def. come not to answer within the said half year, Nor the Sheriff cannot get his body, to have it before the Justices, to answer, &c. now by these words it may seem, that the Sheriff ought to take the body of the Def. or Deforceor, and to imprison him by force of this Distress; But the

words are not so to be understood, or rather seem to be of none effect; for in the Writ of Distress no mention is made of the taking of the body of the Def. And therefore in such case the Sheriff shall do no other thing, but only to return Issues upon the Def. by force of this Distress, &c. of all his goods and chattels, (other than such as are excepted by the Stat. of Westm. 2. cap. 39.) And then as a Rebel, &c. the Def. shall lose the seisin of the Ward, &c. Lector.

Auxi si brief de Droit de Gard soit port, & Distress ove Proclamation issuit & pendent ccl brief le Proces est discontinue per Demise le Roy, ou d'ascun party, &c. in ceo case in le Resummons, le plt. ou ses executors avera Distress ove Proclamation, &c. Stat. Westm. 2. cap. 35.

CAP. 103.

The Sheriff is to make certain Purveyances for the King.

10 E. 3. c. 4. 14 E. 3. c. 19. By the old Statutes it was provided, that all Purveyances that should be made for the Kings great Horses, so long as they did sojourn in any County, should be made by the Sheriffs of the Counties, where such Horses did sojourn, and not by any other; And that the Purveyances made by the Sheriff in this case, shall be delivered to the Keepers of the Horses, by Indenture. And the Sheriff was to make such Purveyances, of the issues of his Bayliwick: And the number of the Horses for which the Sheriff should make such Purveyance, should be contained in his * Commission or Warrant, &c. And that no Purveyance should be made over this number, saving that the chief Keeper had a Hackney; And the Sheriff was to take good heed that the County were not charged of more than should keep the Horses; But for every Horse a Servant, without bringing Women, Pages, or Dogs with them. And if any more were found abiding in the charge of the Countrey, they were to be brought to prison, there to remain, till the King had sent his will. 14 E. 3. 19. But now quære of the validity or use of these Statutes. Dicitur that it appeareth by the Roll, that this Stat. of 10 E. 3. is holden for to be no Statute. *Purveyance for Horses.* *Commandment.*

14 E. 3. c. 19. And in the same manner it was commanded to the Sheriffs, that they should make Purveyances for the Kings Dogs, of the issues of their Bailiwicks: And that such Purveyances should be made by none other, but by the Sheriffs. And that it should be contained in his commandment, the number of Dogs, for which he should make Purveyance, over which number no Purveyance should be made, so that they should live of their certain, without charging the Country. And if any found himself grieved against this Ordinance, he should recover against the Sheriff for such grievance done unto him. Quære also of the use of this Statute. *For Dogs.*

CAP. 104.

The Sheriffs Courts.

It appeareth by Fineux Chief Justice 12 H.7. that at the first all administration of Justice was in one hand, sc. in the King, (so as no Law was used, nor Justice administred, but only before the King himself) but afterwards the administration of Justice was divided into Counties, so as this power was committed to the Sheriff within every County: And for his better government of the County, and for the punishment of evil doers therein, the Sheriff had two Powers or Courts appointed unto him; the one the Sheriffs Torne, unto which all the County, sc. every man of a certain age should come (yea were compellable to come) there to hear the articles and things given in charge, that so they might not be ignorant of the Laws, whereby they were to be governed, and where also they were to be sworn to their allegiance to the King; the other was the County Court, the which was to give remedy between man and man, for any thing between them under 40 s. And so by these two Courts all the County was governed at the first. 12 H.7. f.18.2. Br. Leet. *Torne.* *County.*

Afterwards, for that this was too great a thing for the Sheriff (being but one person) to do, by reason of the multitude of people, and for their ease (and better government, and more easie administration of Justice) Leets were derived out of the Torne, and were granted to the Lords of Franchises or Mannors; And Hundred-Courts were derived out of the County Court, and were granted or letten by the Kings of this Realm to the Lords of certain Liberties (especially to Religious men, Noble men, and others of great place) to hold plea also under 40 s. of Contracts, &c. made within the Hundred. *Leets.* *Hundred Courts.*

The Hundred Court is to be kept every three weeks (by the Bayliffs of the Hundred.) And the Judges of this Court are the Suiters.

And there may be holden every Plaint between party and party, as there may be in a Court Baron: And this Hundred Court is to the same effect as the Court Baron: And it is the Kings Court Baron.

Note that the Hundred Court, is where a man hath by the Kings grant a Court Baron for all the Inhabitants of the Hundred, or of some other great Precinct, to be holden before him, or his Bayliff, &c. and it is in all respects as a Court Baron. 12 H. 7.17. Finch. 122.

And all the Inhabitants within the Precinct of such Liberty or Hundred, by reason of their Tenements there, shall be Attendant, and owe suit to the Hundred. Rede. 12 H. 7. fol. 17. Finch. 248.

Hundred Courts (certain Franchises excepted) were after taken into the Sheriffs hands again, and were re-joyned unto the County Court, and that by force of the Statutes of 2 E. 3. cap. 12. & 14 E. 3. cap. 9. See Fitz. Petition 1.

And now the Sheriff is Judge not only of that grand Court for the County (called now the Sheriffs Torne) but also he is Judge of all the Hundred Courts which be not given away from the Crown. V. 9.

Minsh. verbo Bailie, saith, That these Hundred Courts (certain Franchises excepted) are by the Stat. 14 E. 3. Stat. 1. cap. 9. brought into County Courts.

And he describeth what a Hundred is. Verbo Hundred.

Sir Fr. Bacon writeth, that by occasion of many mischiefs falling

out

out at those great Assemblies of the Sheriffs Torne, the King was moved to allow subdivisions of every County into Hundreds, and every Hundred to have a Court, whereunto the people of every Hundred should be assembled twice a year, for survey of Pledges, and use of that Justice which formerly was executed in that Grand Court of the County (or Sheriffs Torne) And that the Count or Earl appointed a Bayliff under him to keep the Hundred Court. V. 8.

The Sheriff hath now the keeping of two Courts for the County, committed or assigned to him, sc.

1. The Torne for the government of their County, wherein he is to enquire of Criminal causes, and to reform common Nusances, &c. throughout the whole Shire.

2. The County (or Shire) Court, to hold plea within their County of debts, detinue of chattels, trespasses, and the like, being under 40 s. and to replevy the cattel distrained and impounded by others. But if the Sheriff shall hold any plea in any other Court than in the County Court, it is coram non Judic. 7 E. 4. 23. Br. Justicies 3.

But yet in this County Court, by a writ of Justicies, a man may sue for any sum. Also in this Court the Sheriff by a writ called an Exigent, is to proclaim men sued in the Courts at Westm', to render their bodies, or else to be outlawed. All which more particularly see more fully in that which here followeth.

See more of these three Courts, sc. the Torne, and the Hundred, and the County Court, Sir Fr. Bacon his use of the Law, pag. 5. &c.

CAP. 105.

The Sheriffs Torne.

The Book called *Speculum Justiciar.* libro 1. cap. 16. treating of the Sheriffs Torne, saith thus,

Co. 9. pref. Sheriffs of ancient Ordinance do hold general Assemblies twice a year, in every Hundred, whither all the Freeholders within the Hundred are bound to come, by the service of their fees, that is to say, once after Michaelmas, and another time after Easter: and because the Sheriffs for the doing hereof make their Torns (or Courses) through the Hundred, such Assemblies are called the Sheriffs Torne, or Sheriffs Course. *In chescun Hundred.*

And Mr. Bracton writeth thus, Torne de Vic' est Circuitus Vic' per omnia Hundred' Comitatus sui, bis in Anno terminis & locis Stat. & usitat. populi Comit' pro pace Regis observand'.

Brit. fol. 71. And Master Lambert saith, that this Court of old was called also the Sheriffs Moote.

This Court was ordained to be holden in every Hundred for the ease of the people; and therein the Sheriff is to deal with matters touching the King himself, and with matters touching the Common Wealth, (sc. to enquire of Criminal causes, and of common Nusances, and them to reform) And so this Court (the Sheriffs Torne) is for the administring of Justice Distributive. But this Court was not ordained for any particular or private matters between party and party, but for such things the County Court, and the Hundred Court, were appointed; and in those Courts Justitia Commutativa is administred.

So then in this Court it belongeth to the Sheriffs to enquire of all offences personal, and of all the circumstances of offences done in those Hundreds, and of wrongs done by the Kings and Queens Ministers, and of wrongs done to the King, and to the Comminalty, &c.

And such things as the Sheriff could not redress in the Torne, was used to be presented by the Sheriff in the Eschequer. Spec. Justic. libro 1. cap. 17.

Suiters. It appeareth by Britton, that all the Freeholders, and terretenants, and other persons of the age of 12 years or above, which are resiant or inhabiting within the Hundred, ought to come to the Sheriffs Torne, (none excepted but Barons, Clergy-men, and women, children under 12, and men above 60) V. 8. for these, their presence was not, nor is not necessary there, for that they are never sworn upon any Enquests, especially to enquire of any thing inquirable before the Sheriff. See 52 H. 3. c. 2. & 10: & Br. Leet 42. & 39. & Finch. 125. Fitz. 160. c. 161.

And all these did appear at this Court to give or renew their Pledges for their Allegiance. V. 8.

Note, Barons, &c. although they are exempted from their Appearance at the Sheriffs Torne, for any matter or cause which appertains to the Torne, yet the words of the said Stat. are further, Nisi eorum præsentia ob aliquam causam specialiter exigatur, by force of which words, if any Baron, or any other of the said persons exempted, shall be summoned to come to the Torne for any other special cause, as by the Kings commandment upon any special occasion; Or for to aid the Sheriff in executing his Office there, if any shall make resistance; Or for to give in evidence concerning any Purpresture, or other thing there inquirable, and lying within their knowledge; Or upon other the like occasion, Then such persons upon such cause, ought to come to the Sheriffs Torne, &c. Lectur. Mri Chiborne Anno 1 H. 8.

Also if any Baron, Prelate, or other Clergy-man, or woman, have any lands or tenements which they hold by * Suit-service to the Sheriffs Torne, then they ought to come and appear there, and to do suit there, according to their said tenure. * Quære.

Concerning Clergy-men the words of the Stat. of Marlebr. cap. 10. are thus, Necesse non habeat ibi venire Archiepiscopi, Episcopi, Abbates, Priores, nec aliqui viri Religiosi, by the equity of which words all secular Priests seem also to be intended: And yet by the Common Law, men of Religion, and women were exempted from appearance at the Sheriffs Torne.

All men-children of the age of 12 years, are compellable to come to the Sheriffs Torne, there for to hear the charge, and so learn the Laws, &c. And also to be sworn there to the King, and to be his leige-men, (or to be his faithful and loyal Subjects, &c.) Br. Leet 39. & Fitz. 161. a. Britton dicit eos jurare, quod Regi fidem portabunt, quodque neque felones erunt, neque eis Consentient. Cow. 82. But they shall not be sworn to enquire, or to present any thing there; for no man shall be sworn upon or in any Enquest, &c. before he cometh to his age of 21 years. Lit. 259. & Co. L. 68. 122. b.

Townships shall not be amerced by Justices, because all being 12 years old come not before the Sheriff and Coroners, to make enquiry of Robberies, burning houses, and other things pertaining to the Crown, so that there come sufficient out of those Towns, by whom such Enquests may be made full: Except Enquests for the death of a man, whereat all being 12 years of age ought to appear, unless they have reasonable cause of absence. 52 H. 3. cap. 24.

And yet tenants in ancient demesne are not bound to come to the Sheriffs Torne. Fitz. 161. c. Br. Aunc' Dem' 43. 49.
Br. Leet 38.

52 H. 3. c. 1. Also they which have Hundreds of their own to be kept, shall be bound to appear at the Sheriffs Torne, but in the Bailiwick or Hundred where they be dwelling. Stat. 52 H. 3. cap. 10.

The English Statute-Books are so translated; but the old Latin Statute-Books are in these words, Qui in diversis Hundredis habeant Tenementa, non habent necesse ad hujusmodi Turnos venire, nisi in ballivis ubi fuerint conversantes, and with this also agreeth the old French.

Fitz. 160. a. And if any man who hath lands or tenements in divers places of the County and in divers Hundreds, be distreined to come to the Sheriffs Torne, in any place where he dwelleth not, (but that he be dwelling within the precinct of another Hundred) then he may have a writ directed to the Sheriff, commanding him to discharge the party for coming to any other Torne, &c. than within the Hundred where he dwelleth. The form of which writ you may see Fitz. 160. a. & Register. fol. 174.

Also if any Lord hath a Leete or View of Frankpledge of all his Tenants of his Mannor, which is within the Hundred, those tenants are not compellable to appear at the Sheriffs Torne; for that the Torne, and the Leete, are both as one Court: And the Leete is no other, but where the King hath granted to a particular man to hold this Court within a certain precinct (as within his Mannor or Signiory.) So that when it is in the Kings hands, it is called the Sheriffs Torne, for that the Sheriff is to hold or keep it; And when it is in the hands of another person (by the Kings grant or otherwise) it is called a Leete or a View of Frankpledge, and then such as ought to appear at the Leete shall not be compelled also to appear at the Torne, For no man shall be compelled to appear at two Leets. Lectura Mr. Chiborne.

Quære if the Lords (themselves) of Leets, be not compellable to appear at the Torne.

If a man hath a View of Frankpledge (or a Leet) of all his tenants within his Mannor, and he hath one tenant whose house wherein he dwelleth, part thereof doth extend it self within the Precinct of his Seigniory, and part thereof within the Precinct of the Hundred out of his Seigniory or Mannor, such a tenant ought to appear at the Sheriffs Torne, and not at his Lords Leet, for that the Torne being the Kings Court shall be preferred. Lectur. præd.

If a mans house wherein he dwelleth extendeth or standeth in two Counties, or Hundreds, (sc. his Hall, &c. in the one, and his Chamber wherein he lieth in another) here he shall be adjudged to be of that County or Hundred wherein he coucheth or lieth in the Night. ibid.

Again, all Resiants within the Hundred ought to appear at the Sheriffs Torne, and therefore if I do hire a servant for one year, and the second day after he is come to dwell with me, the Sheriff holdeth his Torne, my servant ought to appear there. But if a stranger cometh and lieth at my house three or four days, within which time the Sheriff holds his Torne, such stranger shall not be compelled to appear at the Torne, if he hath any dwelling place of his own, or else-where resiant; Otherwise he may.

A Sojourner ought to appear at the Torne. Ibid.

By the Common Law none are compellable to appear at the Torne for his lands, for this suit to the Sheriffs Torne (or Lords Leet) is a Suit Royal, which is always by reason of the person, and not of any Land. Ibid.

See hic cap. 8. and the reason why it is called Suit Royal.

An Alien resiant within the Hundred is compellable to appear at the Torne; and to be sworn there to the King, for his Allegiance: and yet this makes not him a Denizen. Ibid. & 14 H. 4. fol.

But men of great age (sc. above 70) and men Decrepit, and such as are sick, were at least excuseable by the Common Law.

Note, that if the Leet of any Lord shall happen to be seised into the Kings hands for misuer, or for any other cause, Then all the people resiant within that Leet so seised, &c. shall now come to the Sheriffs Torne. Ibid.

Also when the Lord of a Leet shall neglect to keep his Leet (at least once a year) if the Sheriff shall hold his Torne within that Hundred during such times of neglect, those which be Resiants within such Lords Leets may be compelled to come to the Sheriffs Torne, there to be sworn to their Allegiance (if they were not sworn before at the Leet;) and there to be sworn to enquire of things appertaining to the King and Common-wealth (happening within the Precinct of the Leet so neglected,) which services or suit otherwise would utterly be neglected and lost through the defaults of Lords of Leets. Ibid.

The Jury. In the Sheriffs Torne after the appearance of the suiters, twelve (at the least) of the most discreet and sufficient Freeholders within the Hundred, ought first to be impannelled and sworn (by the Sheriff) to enquire of, and to present all things there enquirable and presentable: and after (as a second Jury) all the rest which appear there ought to be sworn (*per decenaries, & per villes*) the Tything-men with their Tythings, and these shall present or give in their verdict, to the first Jurors, such things as shall be given them in charge. And if they shall conceal any thing, they shall be amerced: But if they shall present any thing that is false, and the 12 first Jurors shall find that their verdict is false, for this they shall not be amerced. Brit. 71. Cromp. 212.

And when the Decenaries or Tythings have delivered their presentments to the said first Jury, and that the first Jury are agreed of their presentments, then they must give up to the Steward or Court Keeper, such presentments as they will stand to and avow; and if there be any felony, they must deliver those up by themselves to the Steward privily, and the rest openly. Cromp. 213 a.

But it is used in some places, that one Enquest is impannelled for the body of the Hundred of the Freeholders, to whom the Constables (or Thirdboroughs, &c.) of every Town and Village within the same Hundred, which come to the Sheriffs Torne, do present upon their oaths, the defaults within their several Towns to the Steward, and he informeth the Deceners, of such things as they have so presented. Cromp 212.

Fineux in 12 H. 7. fol. 18. saith, That every man within the Hundreds, Burroughs and Towns, ought to come to the Sheriffs Torne (by reason of their allegiance.) And that the Constables of the Hundreds, and Petty-Constables of the Burroughs and Towns, ought there to present the defaults of misdoers, &c. sc. every of them must present the defaults committed within their several Limits: and this presentment of the High-Constables, and Petty-Constables shall be made and delivered in, to the said first Jury (as it seemeth) and that upon Oath, otherwise their presentment is void.

The sufficiency of those Jurors. But by the Stat. made 1 R. 3. c. 4. it is now enacted, That no Bayliff, or other Officer, shall impannel or return in any Pannel, any person to be taken or put in, or upon any Enquiry in any Sheriffs Torne, but such as be of good name and fame, and which have Freehold lands or Tenements within the same County, to the clear yearly

value of twenty shillings at the least, Or Copihold lands or Tenements within the same County, to the clear yearly value of 26 shillings and eight pence at the least. And if any Officer shall impannel, or Return any person contrary to this Statute, he shall lose for every person so returned or impannelled (not being of such sufficiency) forty shillings, And the Sheriff other forty shillings, the one half to the King, and the other half to such as will sue for the same, &c. And besides every Inditement in other manner taken, before the Sheriff in his Torne, shall be void. Stamf. 85. See Stat. 11 H. 7. cap. 26.

Lou ceo Stat. de 1 R. 3. *parle que tiel Jurours expender* 20 s. *Freehold* per Ann. *ou* 26 s. 8 d. *Copihold, Semble que ceux summes doient estre certein & Annuall, & per reason del gayne del Orchyard, de Garden, de Market, de Wreck, & hujusmodi, que sont forsque Casual, & nient certein, home ne serra jure de tiel Enquests, &c.*

Mes si deux Joyntenants sont, & que eux ne poent expender forsque 20 s. *Freehold* per Ann. *uncore eux ambidenx poent estre jurus pur ceo, &c. come semble.*

Westm. 2. 13. By the Statute made Ann. 13 E. 1. c. 13. it is ordained that Sheriffs in their Tornes (and in other places where they have authority to enquire of Malefactors or trespasses) shall cause their Enquests to be made (or make their inquisitions) by 12 men at the least, and by lawful men, which shall put their seals to such Inquisitions, or Inditements, that so it may the better appear that the Inditement was taken by twelve lawful men. *Their number.*

If there shall be 15 or 16 such Jurors upon the Inquisition, it seemeth good; and if but 12 of them agree, and those 12 shall set their seals to such Indictment or Inquisition, it sufficeth: But if all the 16 shall agree, then also must all those 16 set their seals thereto.

At the Common Law, and until this Stat. of Westm. 2. cap. 13 dicitur, that Sheriffs in their Tornes would often Endite certain persons by five or six men, and by such as were outlawed, &c. and by force of such Enditements would imprison the persons so Indited, and them keep in prison, until they had made a Fine to them, at their own wills, and that the persons so imprisoned had no remedy, to prevent which mischief this Stat. of Westm. 2. was made.

Afterwards, for that divers Sheriffs, used to alter or change such Endictments, after they were lawfully taken (sc. where the Enditement was for Felony, they would make it Trespass, Et è Converso) and the better to conceal such their abuses they would oftentimes imbezil the same Inditements, To prevent which mischief there was another Stat. made Anno 1 Ed. 3. cap. 17. as followeth.

And because the said Inquisitions taken by the Sheriffs should not be changed, imbezilled nor concealed, therefore by another Statute made Anno 1 E. 3. c. 17. it was enacted, that Sheriffs (and Bailiffs of Liberties, and all others who take Indictments at their Tornes, or elsewhere) shall take those Indictments by Roll indented (or Indentures made between the Sheriff and the Jurors) whereof the one part shall remain with the Indictors or Jurors, under the hand and seal of the Sheriff, and the other part with the Sheriff, or him that taketh the Enquest, so that the Indictment shall not be embezilled, &c. and so that one of the Enquest may shew the one part of the Indentures to the Justices, when they come to make deliverance. But now the Sheriff or his Steward is to send or deliver their part of these Indictments or Presentments to the next Sessions of the Peace, &c. See hic postea Stat. 1 E. 4. c. 2. *The Presentments shall be indented.*

Uncore

Uncore si le Vic. prender lour Enquests ou Inditements sans Indentures nient obstant ceo ils sont assets sufficient : Car ceo Stat. ne voet que sils autermen font, que ils serra voids, ou nul, come autres Statutes express.

Auxi coment que tiel Enditement ou Inquisition ne soit Enseale uncore si soit prise, semble d'estre sufficient. Causa qua supra.

Auxi per le dit Stat. de Westm. 2. cap. 13. *tiels persons que fuer' Endites en le Torne, per* 12 *loyal homes, le Vic. adtunc avoit power de imprisoner eux, (come ils puissent al Common Ley) Et le power del Vic. in ceo point remaine tanque le sesans del Stat. de* 1 E. 4. cap. 2. *le quel veies* hic postea.

Mes per le Common Ley le Vic. poet aver tenus son Torne a quel Lieu que il voile, deins le Hundred : Come si un Pont, ou Cawsy, ou un Common chimmin fuer defective, &c. il puissoit aver appoint son Torne d'estre tenus la lou tiel default fuit, &c. Lectur. Mr. Chiborne.

Auxi per le Common Ley ils puissont aver tenus lour Torne, quant ils pleira ; Et a quel temps del Ann que ils voile ; Mes per le male & Coveteousness del Vic. ceo order que fuit reasonable, ils subvertont in grand prejudice del common people, Car ascun Vic. voile tener lour Torne plusors foits pur le intent que ils voile aver Amercements de ceux queux ne appearont, & nemy pur le Common Weale : Auxi ils voile tener le Torne in tiel Lieu ou ils pense que plusors voile fair default pur l'entent d'aver lour Amerciaments : Auxi ils voile aver tener lour Torne a quel temps ils pense que plusors voile fair default, pur aver lour Amerciaments, & sic veut pur lour singuler & private profits. Pur remedy queux mischiefs le Stat. de Mag. Charta, cap. 35. provide sic, Nec aliquis vicecomes vel ballivus suus fac' Turnum suum p Hundredum, nisi bis in Anno, & non nisi in loco debito & Consueto, sc. semel post Festum Paschæ, & iterum post Festum Sancti Michaelis : *Et nient obstant ceo uncore ils voile tener lour Torne al auter busie temps, sc. en temps de Harvest (que fuit apres* Festum Paschæ,) *Et in Lent que fuit apres Michelmas,) Et pur remedy ceux fauxities & mischiefs un auter Stat. fuit fait.* Anno 31 E. 3. cap. 14. *per quel fuit ordeine que le Vic. tiendre son Torne deins un mois prochein apres le Feast de Pasche, & deins un mois prochein apres Michelmas.*

The place. **So note, that the Sheriff ought to keep his Torne in every Hundred within his County, as is aforesaid.** Co. 9. Preface. Fitz. 160. a. Br. Leet. 42. — 9 H. 3. c. 35.

But the Sheriff ought to keep this his Torne no where but in due place and accustomed, and that by force of the said Statute of Magna Chart. cap. 35.

And if the Sheriff shall keep his Torne in loco consueto, **he may be indicted and punished for the same.** See Dyer 151. **Sir** John Savages **Case**, & Kiel. 192.

Time. **Also the Sheriff ought to keep, or to hold this his Torne but twice in the year, sc. once within one month next after** Easter, **and again within one month next after** Michaelmas ; **And if he shall hold his Torne at any time after the month from the said feast days of** Easter **and** Michaelmas, **it is void, by the Stat. of** 31 E. 3. **And all indictments and presentments (either of Felony, or otherwise) so taken by him after the said months are** Coram non Judice, **and altogether void.** See 38 H. 6. fol. 7. **And besides the Sheriff shall lose his profits thereof, &c.** Br. Leet. 17. & 21. & Indictments 9. 27. Vide Co. 10. 76. Stamf. 84. & 6 H. 7. f. 2. — 31 E. 3. c. 15. 6 H. 7. f. 2. 3. Fitz. Torne.

The reason why the Torn must be holden within the month next after Easter **and** Michaelmas, **appeareth in the Statute of** 31 E. 3. cap. 15. sc. — 6 H. 7. f. 2.

15. sc. for that the Torne being held in Lent, it hindred Devotion, and being in Harvest, it hindred the people in their busines, &c.

Mes posito que le Vic. teigne son Torne apres le mois, & fait le Record d'aver date dans le Mois, & un home est Endite a mesme le Torne, de Felony, Et cee Record vient devant Justices queux ont power de luy arreigner sur cel Record, Si cestuy que est issint Endite voile dire que le Torne fuit tenus al auter jour que le Record fait mention, la semble il ne serra resceive a defeater cest Record per tiel Averment, &c. tamen quære inde *intant que l'ou Vic. est in jeopordie.* See hic cap. 42.

Also the Sheriff keeping his Torne oftner than twice a year, or after the said months (next after the Feast days of Easter, and of St. Mich. the Arch-Angel) he may be indicted for the same, as it seemeth.

Fitz. Leet 11. Note (by some opinions) that the Sheriff in his Torne holden after Easter, ought not to enquire of any action popular, &c. but only he is then to take their suit which are suiters, and to take the view, sc. quod Tithinga tenentur, sc. that all above the age of twelve years come and appear there, &c. (the cause of which their appearance, see hic cap. 8.) But at his Torne holden after Michaelmas, then he shall enquire of such things as are there inquirable. See Stat. 9 H. 3. c. 35. 8 H. 7. 4. ab. & Br. Leete 23.

Co. 4. 33. & 6. 12. This Court (called the Sheriffs Torne, Turnum) is a Court of Record, and is belonging and incident to the office of the Sheriff, and ought not to be severed from it: And the Sheriff is Judge therein, and is to appoint Clerks under him in this Court, such as he will answer for at his peril. *Est incident.* *Vic. Judge.*

42 E. 3. 4 31. Br. Officer 831. But the Sheriff ought not to take any thing, for the holding or keeping of his Torne: Neither can he prescribe to take any thing, for that he is an Officer removable. *Ne poit prescrib*

Fitz. Leet 11. The stile of the Torn or Court must be thus, Vis. Francipleg' Domini Regis tent' apud L. coram vicec' in Torno suo, &c. And not Torn' vicec' tent' tali die apud L. For this word Torne signifieth but the perambulation of the Sheriff, and is not the Name of the Court. *The Stile.*

The form of a Warrant to proclaim or warn the Sheriffs Torne.

A. B. miles vicecomes com. *Cantabr.* J. S. ballivo Hundred de R. salutem. Ex parte Domini Regis tibi mando, quod proclam' fac' vis. Francipleg' Domini Regis, apud L. tenend. coram me in torno meo tali die, &c. Et interim venire facias ad tunc & ibidem 24 probos & legales homines, una cum quatuor hominibus, & præpositis cujuslibet villæ, Hundred' præd'. Ad faciendum quod eis ex parte Domini Regis ad tunc & ibidem fuerint injungend'. Et quod tunc tu sis ibidem in propria persona tua, ad faciendum quod ad Officium tuum pertinet. Et hoc non omittas sub periculo incumbente. Datum, &c.

CAP. 106.

What things are inquirable in the Sheriffs Torne, at this day.

THe Sheriffs Torne in ancient time was one of the highest Courts in it self, which the King had: For at the first they had more authority than the Justices of Peace now have; for the Sheriffs in their Tornes did enquire of all Treasons which were Treasons by the Common Law, and of Felonies, &c. Also in the Torne they did Enquire of Alienations without Licence by the Kings Tenants, &c. And of Alienations in mortmain; And of such as held by Pontage, or to repair any Bridge, &c. and as the great Enquest (at the Assises, or Sessions of the Peace now) are sworn to inquire of matters through the County, so this Torne was in stead or place of such great Enquest, &c. Lectur. Mr. Littleton super Stat. Westm. 2.

Also in this Court the High Constables of Hundreds, and Petty Constables were appointed and sworn; breakers of the Peace were punished by fine and imprisonment; the parties beaten or hurt were recompenced upon complaints of Damages; All Appeals of Murther, Mayhem, and Robbery, decided; Contempts against the Crown, publick annoyances, Treasons and Felonies, and all other matters of wrong, betwixt party and party, for lands, or goods. Sir Fr. Bacon of the use of the Law, p. 5, 6.

Treason. The Sheriff in his Torne at this day hath power, and ought to enquire of such as are mortal Enemies to the King, Queen (his wife) or to their children: And of the Councellors, Procurers, Consenters, and Aiders; and of all Treasons at the Common Law. Cromp. 212.

Also of such as falsifie the Kings Seal. Stat. 18 E. 2.

And such as falsifie the Kings money; or shall wash, or clip the same, Finch. 241. but M. Brooke maketh a quære thereof, titulo Leet 26.

Felonies. They are also to enquire in their Torne, of all manner of Felonies by the Common Law, as of murder, manslaughters, and other Homicides: See the Stat. 52 H. 3. c. 24. & 3 Ed. 1. c. 11. & Britton. Cromp. 212.

And yet see Br. Leets 26. & Fitz. Torne 5. and the Book 22 E. 4. fol. 22. by the opinion of all the Justices, that the power of the Sheriff in his Torn, was to enquire of all Felonies, at the Common Law, except the death of a man. Finch. 125.

They are there to enquire of Burglaries, Robberies, and Thefts, and of the receivers of such offenders.

Of burners of houses, or stacks of corn feloniously.

Of breakers of prison, being therein for Felony.

Of ravishing of women, Stat. 18 E. 2. Cromp. 212. Yet the Book 22 E. 4. & Br. Leet 26. & Fitz. Torne 5. are contrary, as being a Felony by Statute, and not by Common Law. Sed de hoc quære.

Of Poisoners.

Of Sorcerers, Conjurers, and Witches: which offences were Felony by the Common Law, and the offenders therein were to be burned. See Fitz. 269. b.

Of Petty Larcenies, in stealing Hens, Geese, or Sheafs of Corn, &c.

Of such as take Theft-bote.

Br. Leets 26. But note, that the Sheriff in his Torne, hath no authority to enquire of any Felonies by stat. as cutting out of tongues; putting out of eyes, &c. 28 E. 3. 95. 21 E. 21. Fitz. Torne 5.

Note also, that no Sheriff within any of the Counties of Wales, shall have power to enquire of any manner of Felony, in any their Leets, Law-days, or Tornes, within the same Dominion to be holden. Stat. 35 H. 8. c. 26.

Also Sheriffs shall enquire in their Tornes of the escape of any Felon; And of any person imprisoned (for any other cause) which is let go without warrant or mainprise. Stat. 18 E. 2.

And of such as have abjured the Realm, and are returned without licence.

Of Outlaws, which return without the Kings Warrant.

Of Treasure trove.

Nota, que Coyne trove, comment que ne fuit abscondita in terra, *est Treasure trove, (& semble Inquirable icy)* Br. Presentments 24. *Profits le Roy*

Issint semble de money, plate, ou bullion trove, le owner nient conus; Car ceux serra dit Treasure trove, & le Roy avera eux. Br. Coron. 176.

Of Wayfes and Estraies.

Cromp. 213. Of wreck of the Sea, found and retained.

Of those which claim any Franchise real.

Of new Franchises, or Customs, levied on land or water.

If any man hath a Fair, or Market, by grant or by prescription, and doth not hold, or keep the same Fair or Market, as he ought to do.

It seemeth also, that the Sheriff in his Torne ought to enquire of all Purprestures and Encroachments made upon the Kings Lands or Franchises, &c.

Now concerning this word Purpresture, there is no such word in use in the Latin Tongue, but only in our Law, And in the general sense this word Purpresture is now taken for any thing which any man by wrong hath encroached upon another, and (by inclosure, or usage) appropriated unto himself. M. Manwood, fol. 59.

And Skeene de verbo Purpresturæ maketh three sorts of this offence; One against the King, the second against the Lord of the Fee, the third against a Neighbour lying near him.

Concerning the King this word Purpresture may seem to be, when another doth take or incroach any thing upon the King, which he ought not to have, whether it be in Jurisdiction, Franchise, or Land: As if a man do hold a Fair without the Kings grant, or lawful Prescription; Or do incroach or claim any liberty within the Kings Forest; Or do levy a house, wall, or hedge, in the Kings High-way; Or upon the Kings Land: The penalty in these cases is, that he which maketh such Purpresture shall be grievously amerced, and the Purpresture shall be pulled down and destroyed for ever at the Kings pleasure. And if it be in land, or buildings, after the Purpresture is found by Enquest, and the value of it assessed, it may be set at yearly Rent to be answered to the King, if the King will. Lectur. Mri Treherne. And herewith agreeth Mr. Glanvile libro 9. cap. 11. tit. Purpresture. See hic cap. 9.

Vide plus Stat. 4 E. 1. cap. 4. & Cromp. *Author des Courts* 152. & 203.

Vide Minch. verbo Purpresture & scribe hic.

Also concerning this word Nusance, Nocumentum, in our Common Law signifieth any thing which tendeth either to the general hurt and annoyance of the Kings Liege People, Or else to the hurt and annoyance of some one particular person. But in the Sheriffs

Torne (as also the Leet) they are to Enquire only of Common Nusances.

And the Sheriff in his Torne is also to Enquire of Purprestures, Usurpations, or Encroachments, made in any the Kings demesne lands, woods, or upon high-ways, common streets, or waters, to any common annoyance, Stat. 18 E. 2. Vide Co. L. 277. b.

Of all walls, houses, hedges, and ditches, made up, or broken down, to annoyances, ibid.

Whether High-ways be inlarged according to the Statute of Winchester.

Of ways, and paths streightned, or stopped.

Of any other Nusances, or annoyances, in the Kings high way, or in any common way or path; By turning or altering them out of their ancient place; By ditches there not scoured. Br. Leet 26. By laying any Carion, or Muck, &c. there.

Of the Kings High-ways, if they be not enlarged and cleansed of bushes and trees according to the Stat. of 13 E. 1. c. 5.

Of Nusances in any Rivers, or common waterings by stopping, streightning, or turning them out of their right course.

Of Bridges, and Cawsies decayed, or broken, and who ought to repair them; Or hold any land to repair them.

And of all other, Common or popular Nusances, or grievances done to divers or sundry of the Kings subjects.

Common Trespasses. Also the Sheriff in his Torne may Inquire of Affrays. Br. Presentments 7.

And of Bloodsheds. Br. Leet 26. Fitz. Torne 4.

If there be any misdoer within the Hundred, whereby any peril may come to any person, of life or of member, the name of such misdoer is to be presented in the Sheriffs Torne.

Of Pound-breaches.

Also all other things being a Trespass at the Common Law, and popular, is there Inquirable.

But of such things as are trespasses by Statute, or Offences against any statute, the Sheriff hath no power to enquire thereof in his Torne; Except the statute doth expresly therein give authority to the Torne, or Leet. See 28 E. 3. 95. 21 E. 4. 21. 3 H. fol. 1. Br. Leet 19. & 25.

Neither shall any other thing be enquired of in the Torne, but only such Nusances, grievances, offences, or trespasses as are popular and common grievances to many persons, And therefore assaults made to a sole or particular person (although it be done in the Court) yet it is not there Inquirable; Except there be bloodshed. Dyer 234. Fit. Torne 1. 4. Finch. 125. 4 H. 6. f. 10. Br. Pres. 7. 2 H 7. 10.

Neither can they inquire there, of a Close, or Hedge, debruised (or broken) for that is particular. Br. Leet 26. Finch. 125.

Evil members. The Sheriff also in his Torne may enquire of Malefactors in Parks.

Of takers of Doves in Winter by Doorefalls, or other Engines. 18 E. 2.

Of Usurers. Cromp. 212.

Whether Hugh and Cry be duly made upon Robberies and other Felonies.

Of Hue and Cry levied, and not pursued.

Of Hue and Cry levied without cause.

Of Nightwalkers, Br. Leet 26. and whether night-watches be duly kept.

Of

Of those which go in message of theeves.

Of those which sleep by day, and watch by night, and fare well, and none know whereof they live.

Of those which continually do haunt Taverns.

Also the Assise of Bread, Beer, or Ale broken, is there inquirable. Stat. 18 E. 2. Br. Leet 25.

If any Hosteler or Inholder shall make any horsebread, which is not sufficient, lawful, and of due Assise, &c. the Sheriff in his Torn may enquire thereof, and determine the same, by the stat. 32 H. 8 cap. 41. & 21 Jac. cap 21.

So if any Hosteler or Inholder shall make any horsebread, except he be dwelling in a Town being a thoroughfare, and being no City, Town-Corporate, or Market-town, wherein a common Baker is dwelling, for Bakers shall make such bread. 21 Ja. cap. 21.

So if any Hosteler or Inholder shall not sell their horsebread, hay, oats, and provender, and also all kind of victual, both for man and beast, for reasonable gain, &c. Or shall take any thing for litter, it is inquirable, and to be determined in the Torn. And these Offendors for the first offence shall be fined, &c. and for the second offence shall be imprisoned, and for the third offence shall stand upon the Pillory, and after shall be forejudged for keeping any Inn again. 21 Ja. cap. 21.

False measures, false ballances, and false weights are there enquirable: Stat. 18 E. 2. Also Stat. 9 H. 5. c. 8. the falsifiers and counterfeiters of false weights are here enquirable.

If any have double measures, (as bushels, gallons, yards, or ells,) and buy by the greater, and sell by the lesser, it is there enquirable. Ibid.

And yet see the Book 3 H. 7. f. 1. & Br. Leet 19. a presentment in the Sheriffs Torne, that a man did use false measure of a bushel, and the presentment was adjudged to be void, for that it was given by statute, and the Statute gave no express authority to the Sheriff to enquire thereof.

If night watches be not duly kept (according to the statute of Winchester) it is there enquirable.

If any person shall make a prison of, or in their own houses, it is there enquirable: Cromp. 212.

Homsoken, or forcible entry into houses without licence, and contrary to the Kings peace, seemeth to be there inquirable: Cromp. 212.

Attachments made by the officers of the Courts of the East Marches, or West Marches, &c. are there enquirable by the statute of 31 H. 6. c. 3. But seemeth to be repealed by the statute 4 Ja. c. 1.

E. 6. c. 5. Also the Sheriffs in their Torne may enquire of all offences committed, contrary to the statute made 7 E. 6. to avoid the express, as well of spending, as of the prices of wines: and every presentment thereof taken by the oaths of xij men in the Torne, shall be of such force, as if the same were taken in the Kings Bench.

Also they shall enquire, if all the Jurors and suters which owe sute to this Court be Come (18 E. 2.) sc. if all persons of twelve years of age or upward, dwelling within the hundred, be come to this Court (except Clerks, * Knights, and women: Cromp. 213.)

* Quære de chivalers.

Fitz. Torn. 5. Br. Leet 26. Co. L. 168. Dyer 13.

Lastly, the Sheriff in his Torne, hath authority to enquire of all other things or offences that is either felony, or trespass at the Common Law: and of all other Articles and things enquirable in a Court Leet (if there have been default in the Lord in not keeping his Leet, or if they have been omitted, or not formerly inquired of and found, and redressed or punished in the Leet.) For that all Leets were

at the first derived and taken out of the Sheriffs torne, so that for default of enquiry in Leets of things there inquirable, the same things there omitted, and not enquired of, &c. ought to be enquired of in the Sheriffs Torne, and if it be there omitted, then to be enquired of by the Justices in Eyre, at their coming into the Countrey, or else by the Justices of the Kings Bench. See 8 E. 4. fol. 21 E. 3. fol. 3. 29 E. 3. 27. 41 E. 3. 26. 43 E. 3. 29. & 18 H. 6. 12. Br. Pref. 1. Cromp. 212.

De Felony, coment que il soit Enquire deins le Leet, uncore il serra Enquire arere in le Torne, Ut dicitur.

If it be found in the Leet of any Lord, that a Bridge lying within the Precinct of the Leet is ruinous, and that such a man ought to repair it, he shall be amerced in the Leet: And yet if after the same default shall be found again before the Sheriff in his Torne, the party shall again be amerced, and the Sheriff may levy that amercement, and neither the Lord, nor party hath any remedy, for this default after the Leet was not presented at the Leet, and therefore being presented at the Torne, it shall be there punished: And if it be not amended before the next Leet, the Lord at his Leet may cause him to be amerced again, and so the party may be amerced, toties, quoties, at the Leet, and also at the Torne, until it shall be amended. Lectur. Mri Chiburne.

And although at the Leet, the Steward or Jury shall set a pain upon the party, to make, or amend the Bridge, &c. before such a day, yet if the Torne shall be holden before that be amended, the party shall be amerced at the Torne. ibid.

It is a good presentment at the Torne, that such a man ought and used to repair such a Bridge, notwithstanding that they shew not that the party hath any lands to repair the said Bridge.

Mes le Signeur del Leet (que ad grant le Roy d'aver le Amerciaments, &c.) avera les Amerciaments (sc. avera allowance del eux in L'eschequer) sur l'enquiry eme devant le Vicount ou devant les Justices, quære & vide Fitz. Leet 13.

And it hath been adjudged that the power of a Sheriff in his Torn, and of a Steward in a Court Leet, is all one: 22 E. 4. Br. Leet 26. sc. that the same authority which the Leet hath within the Precinct thereof, the like the Sheriff hath in this Torne, & è converso.

Also the Sheriffs Torn is sometimes in our Books called the Kings Leet, and sometimes the Sheriffs Leet, or the Leet of the Torne of the Sheriff: see Br. Leet 21. & 23. which appeareth also by the style of the Torne, hic antea.

If the Sheriff shall enquire of a Nusance in his Torne, and the same shall be found, which ought to have been enquired of in the Leet of another man, and hath been used to be found there, the Sheriff cannot distrain for the amercement upon this presentment, and if he do distrain he is a trespassor: but if default be in the Lord of the Leet, that he did not inquire thereof, or that the same be not found in his Leet, when it ought to be inquired of, or that it be not punished, or amended, the Sheriff then by the Lords default may inquire thereof in his Torn: 21 E. 3. 3. 28 E. 3. 95. 10 H. 4. 4. And herewith agreeth the Book of 29 E. 3. that if a Nusance, &c. be within a Franchise, the Sheriff ought not to punish this, but it appertaineth to the Lord only to redress this, for otherwise every Lord might lose his Franchise in every thing: but if apparent default shall be in the Lord, as in not keeping his Leet, or that he will not punish the offendors, then the Sheriff may enquire thereof in his Torne, and it being found there, the Sheriff may punish the same: see 29 E. 3. fol. 27. Cromp. 212.

But

But where there is no default in the Lord of the Leet (either in not keeping his Leet, not Enquiring of, or not finding, or punishing, and redressing the fault) there if the Sheriff in his Torn shall enquire of such things presentable in the Leet, and shall after make his precept to his Bailiff to distrein for any amercement assessed for any such thing in his Torne, such Distress is tortious, *Et le party poet aver son Replevy & recover damages come semble; Car auterment Viconts poent touts foits prender les profits & amerciaments de Seigneurs de Leets, issint que ils navera ascun profit pur lour Leete.* Vide Fitz. Barr. 289. & 29 E. 3. fol. 27.

Mes les Torne del Vicount, come un overseer del Court Leete, est de enquirer si les Deccenaries sont pleins, ou nemy; Et a presenter les defaults queux ne sont redress in le Leete. Finch 32.

Et concernant ceux Deccenaries, Nota, que pur le melior expedition de Justice, le Hundred fuet divide in 10 *Villes, & chescun Ville in* 10 *Families, d'ont ceux Villes fueront dits Deccenaries; Et en les Deccenaries, chescun serra pledg pur l'auter de son bon gesture (d'ont le Court Leet fuit auxi dit* Curia visus francipleg*ii) Auterment cestuy que prist lui en son meason fuit destre amercé en le Leet.* Finch. 126. Co. 6. 77. b.

But if the Sheriff in his Torn shall enquire of any thing, which is not there inquirable, it is void, as being taken Coram non Judice.

If the Sheriff, or the Steward of the Sheriffs Court shall enquire, or shall take any inditement, or shall hold plea, of any thing whereof they ought not, it seemeth to be punishable. Vide 41 Ass. 30. Br. Contempts 12. The Lord of a Leet fined for that his Steward did take an Inditement unduly. Also 2 R. 3. fol. 10. a. the Abbot of Crowland was punished (sc. his Liberty was seised) for his Stewards default: And by some opinions the Lord of a Court Leet, which shall keep his Court Leet by an ignorant Steward, his said Court may therefore be seised in a Quo Warranto.

Nota, que le Vic. avera les amerc' & fines (& divers auters profits) del ceo Court, Et il n'ad ascun auter chose de levier son grand summe ovesque, mes que chescun Vic. est charge sur son account, sinon de cest Court; car le Torne (& les profits del cestuy) est al Vic': Et est son Court, & nemy le Court le Roy, per Tremayle 6 H. 7. f. 2. 3.

CAP. 107.

IT seemeth in former times that Sheriffs, sometimes in malice, and sometimes for their private lucre and gain, did often imprison such persons as were Indicted before them, as well in their Tornes, as also in other places, by virtue of the Kings Writ or Commission to them granted (and which they might have justified to do as well by the Common Law, as also by virtue of the Stat. of Westm. 2. cap. 13. as it seems) But the mischiefs thereof appearing, and somewhat to restrain their power of imprisoning any man for malice, or profit, or other sinister cause, first Sheriffs were restrained by Statute made Anno 28 E. 3. to make any Enquiry by Writ or Commission as followeth.

Whereas in times past Sheriffs by vertue of Commissions and general Writs granted to them at their own sute for their private gain, did take divers enquests to indict people at their pleasures, and then took fines of them to their own uses, and delivered the parties so indicted, without

without bringing them before the Kings Justices: It was therefore by a Stat. made 28 E. 3. ordained, that all such Commissions and Writs should from thenceforth be repealed, and none such after to be granted: so that the Sheriff (by that statute) is restrained to make any enquiry by Writ or Commission except in some special cases, whereof see Fitz. 92. hic postea.

Vic' ne fera Enquiry per breve, &c.

28 E. 3. c. 9. See 42 E. 3. c. 4.

Afterwards for that divers persons were greatly troubled by the inordinate indictments and presentments (as well of felonies and trespasses, as of other things) taken before Sheriffs, their under-sheriffs and other ministers at their Torns and Law-days; which Indictments were often affirmed and found by Jurors having no freehold, &c. and sometimes by menial servants and bailiffs of the said Sheriffs, &c. By reason whereof many people were arrested, and put in prison by the said Sheriffs and their ministers, and then were constrained to pay them great fines, to be delivered out of prison: And further, the said Sheriffs, &c. had the awarding of Process upon such Indictments when they were found, and the assessing of the fines: and also the said Indictments were often imbeasled and concealed: For the reformation whereof it was ordained by a statute made anno 1 E. 4. that upon all presentments and indictments, which shall be taken before any Sheriff (Under-sheriff, or other ministers) in their Torn or Law-days, they shall have no power to make, or grant out any Proces against any person so indicted; Nor to attach, arrest, or put in prison; nor to assess, levy, or take any fines, or amerciaments of any Person so indicted or presented before them, by reason or colour of any such Indictment or Presentment, nor to take of any Person so indicted or presented, any Fine or Ransom, but that the said Sheriff (or other Ministers) shall bring and deliver all such Indictments and Presentments (taken before them in their Torns to the Justices of Peace, at their next Sessions of the Peace that shall be holden in the County where such Indictments or Presentments shall be taken, upon pain that every Sheriff (Under-sheriff, Clerk, Bailiff, or other Ministers) failing to deliver or present any such Indictment to the Justices of Peace at such Sessions of the Peace as aforesaid, to forfeit forty pound.

1 E. 4. 44.

Fit. Torn. 3. Br. Presentments.

Lour Inditements serra deliver al Justices

A trespass presented in the Sheriffs Torn, the Sheriff ought to certifie the same Presentment to the next Sessions of the Peace, and there the Justices of Peace are to assess the Fine. Cromp. 159.

Les Justices triers loffendor.

And the Justices of Peace are to award Proces, upon all such Indictments and Presentments, and to try, arraign and deliver the offendors, and not the Sheriff, &c. and also the said Justices of Peace, shall have power to set such fine upon every person indicted or presented (in the Sheriffs Torn) of or for any trespass; as it shall seem good to them in their discretions; And the estreats of the same fines and amerciaments shall be inrolled, and by Indenture delivered to the said Sheriff, Under-sheriff, or their Clerks, or Ministers, to the use and profit of him that was Sheriff, of the said County at the time of the taking of such Indictments or Presentments: and if any Under-sheriff, Clerk, Bailiff, or Minister shall cause any person to be attached, arrested, or put in prison, or shall cause to be taken any fine, or ransom, or levy any amercements of any person so indicted or presented, by colour of any such Indictment or Presentment (before him or them) taken at their Torn; before they have process from the said Justice of Peace, or Estreats delivered out of the said Indictments or Presentments (so delivered to the Justice of Peace,) the Sheriff so offending shall forfeit 100 l. the one half to the King, &c. and the other half to the party thereby indamaged.

Et estreates le fines, &c.

Al use le Vic.

But

1 Ed. 4. ca. 2. But this Statute extends not to Indictments taken before the Sheriffs of London in the said City; Nor to any Person having the grant of fines or amercements by any Letters Patents of the King, &c. Nor to any Person having any Liberties or Franchises by any Letters Patents, or in any other manner by Prescription.

Neither doth this Statute give Authority to the Justices of Peace, to award Process upon all Indictments taken in the Sheriffs Torn when they be brought and delivered them; but only of such Indictments as shall be lawful and sufficient, and such as contain matter whereof the Sheriff hath Jurisdiction in his Torn, and power to make enquiry by the Common Law or by Statute; for if the Sheriff in his Torn shall make enquiry of Liberties given contrary to the Statute of Liveries, or will enquire of the Statute of Laborers, or Indict one who did Feloniously ravish a woman, or such like, which be not inquirable in the Sheriffs Torn, though such Indictments be by him brought and delivered to the Justices of Peace according to the said Statute made 1 Ed. 4. yet they ought not to award Process thereupon for that they were taken coram non judice, and so void. Co. 5 112. & 9. 26.

Br. Present-ment 16. Fit. Torn. 3. 4 E. 4. 31. 8 E. 4. 5.

Also if the Sheriff, &c. shall not deliver their Indictments and Presentments (found and taken in their Torns) to the Justices of Peace of the same County at their next Sessions, according to the aforesaid Statute made 1 E. 4. then such Indictments, &c. not so delivered, &c. are void. Vide Fitz. tit. Torne de Vic. 6.

28 E. 3. c. 9. Stamf. 34. So then (at this day) Sheriffs shall make no inquiries, nor take any indictments of Felony, by vertue of any Writ or Commissions procured at their own suit; Nor elsewhere, but in their Torns.

But in their Torns Sheriffs at this day may make inquiries, and take indictments of Felony, virtute Officii: wherein notwithstanding they must demesne themselves according to the afore-recited stat. Stamf. 34. And Sheriffs shall hold their Torns and take indictments, but in convenient and usual times, and places accustomed; And they shall take their indictments by the Oath of twelve men at the least, and by roll indented (sc. those indictments or presentments must be inrolled) and sealed between the Sheriff and the Jurors; and they shall take their indictments by men of good name and credit, (legales homines) and sufficient of Estate as appeareth here before.

Fitz. 92. c. And yet if any man having the Kings protection, another shall take his goods, or shall enter into his Lands, &c. or shall beat his servants, &c. he may have a special Writ or Commission to the Sheriff (of that County) to make enquiry thereof, and to certifie the same before the King, &c. and thereupon Process shall be made out against them (in the Kings name) by Venire facias: as upon an Indictment, and that they shall be fined therefore.

Register 153, 154. So if any Bridge or Wall, Cause, or Sewer shall be broken to the annoyance of the Countrey it appeareth by the Register, that the King may send his Commission or Writ to the Sheriff, to inquire who ought to make such bridge, &c. and to distrain them to repair it, &c.

28 E. 3. c. 9. 42 E. 3. c. 4. And although by the former Statutes of 28 E. 3. c. 9. & 42 E. 3. it was ordained that no Commission or Writ should be thenceforth granted to the Sheriff to make any inquiry, &c. yet if the King shall grant out such a Commission or Writ to the Sheriff, quære, if it be not good, it seemeth to Master Fitz. 92. c. that it is not good, for that this Statute bindeth the King that he cannot now grant out such a Commission to the Sheriff; and yet enquests of Office may be taken by the Sheriff as in Wast, Redisseisin, &c. See hic cap.

CAP.

CAP. 108.

The Power and Authority of the Sheriff, in, or by reason of his Torn.

By the Common Law, (before the Stat. of Magn. Charta) the Sheriff in his Torn (as also the Steward in a Leet) might have Arraigned one who had been Indited before them of Felony (and so might the Coroners also upon an Inditement sup. visum Corporis) Finch. 125. but now by the said Stat. of Magn. Charta, cap. 17. It is ordained, that no Sheriff, Constable, Escheator, Coroner, or other Bailiff of the King, shall hold Pleas of the Crown: And therefore the Sheriff in his Torn cannot now hold Plea of any Felony, or other thing pertaining to the Kings Crown: nor of any thing touching any Lands, nor of Debt, Trespass, or other matter whatsoever. Mag. Charta 17.

But this Court, and the Authority of the Sheriff therein, is only or principally for the good ordering and government of the Countrey, by taking view of the suters, and Inquiry and Presents of offences committed therein against the Peace, and of other common Nusances and Grievances within the County.

But the further proceeding upon such inquiry, presentments, and inditements made and taken before the Sheriffs in their Torns, belongeth now to the Justices of Peace, &c. as aforesaid, by force of the Stat. of 1 E. 4. c. 2. before recited.

And yet note, that the Sheriffs Torn is a Court of Record (in all things that pertain to the Torn,) and the Sheriff therein is a Judge of Record, and hath authority (in some cases) to imprison offendors, to assess fines upon them, and to take Recognisances: As Fitz. 82. Br. Leet 39.

The Sheriff in his Torn (or his Steward there) may commit him or them to Ward, that shall make an Affray in their presence, whilst they be in Execution of their Office: And may also by recognisance bind such Offendors to the Peace; and may commit them to Ward until they have found sureties for the Peace; and all this he may do notwithstanding the said Stat. of 1 E. 4.

Also the Sheriff in his Torn, or his Steward there, may command the meet help, and aid of others, to Arrest such Affrayors.

If any other contempt or disturbance to this Court shall be committed in the said Court, before the Sheriff (or Steward there) they may impose upon such offendors a reasonable fine: see Br. Leet 14. 36.

The Sheriff in his Torn (or his Steward there) may take the examination of felons, and may commit them to the Gaol; And may also take the presentment of any felony at the Common Law, committed within their Precinct, as you may see here before. Co. 8. 38.

In former times the High Constables of every Hundred, and the Petty Constables of every Town, were chosen and appointed by the Sheriff of the said Shire, yearly in the Torn, and there these Constables received their Oath. And at this day they may still be appointed or chosen, and sworn in the Sheriffs Torn before the Sheriff, or his Steward, as well as in the Leet.

In the Leet, or Sheriffs Torn, if one that oweth sute thereto, will not be sworn, &c. he shall be fined and imprisoned, (by the Sheriff or Steward there) until he hath paid such his fine: Or he may be amerced, and be distrained for such amerciament, by his goods, in any place within the County. Fitz. Leet 11.

And

And so if any that oweth suite there shall make default of appearance, he may be amerced by the Sheriff, and distrained for the same amercement, as before. Fitz. Avowry 194.

But if any Lord hath the view of Frankpledge of all his Tenants of his Mannor, which is within the Hundred, those Tenants are not compellable to appear at the Sheriffs Torne. For the Torne, and the Leet (or View of Frankpledge) are all one Court. And when it is in the Kings hands, it is called the Sheriffs Torne; and when it is in the hands of any other person of the Kings grant, (or otherwise) it is called the View of Frankpledge, or Leet, or Law-day.

Co. 8. 38. So if a suiter, being sworn of the Jury there, shall refuse to make presentment there: or if a Juror there shall depart without giving up their verdict, the Sheriff (or Steward) may impose a reasonable fine upon such offendors.

Ibid. So if the Sheriffs, Bailiffs, or other Officers belonging to this Court, shall refuse in Court, to execute their Office, they may be fined as aforesaid; And so in other like cases happening in this Court before the Sheriff, he being Judge therein.

Cromp. 210. a. Upon a presentment of a Nusance in the Sheriffs Torne, the offendor may be amerced there by the Sheriff, and the Sheriff may distrain for such amercements, throughout all his County, by the Book 2 H. 4. f. 24. Br. Leet 41. & 8 R. 2. Fitz. Avowry 194. but now it seemeth that such presentment must be delivered to the Justices of Peace, who are to try the offendors, &c. and to fine him, and then to estreat the same, before the Sheriff may levy or take any fine or amercement for such Nusance: see the former statute of 1 E. 4. cap. 2. And yet by 8 E. 4. 5. Tit. Torn. 4. the Book of 8 Ed. 4. If a presentment of a bloodshed, &c. shall be lawfully made in the Sheriffs Torne, the Sheriff hath power to amerce him that is found guilty, and the offendor shall make his fine there (as it seemeth) and shall not be put to answer the same before the Justices of Peace, &c. Note, that this case was so adjudged after the making of the former Stat. 1. 4. & quære inde.

Or else the King may have a Distringas, to levy such a fine or amercement, or the like, by Distress and sale of the Offendors goods. Finch. 125.

If a Purpresture be presented in the Sheriffs Torn, the Sheriff may reform and pull down the same. Cromp. 212. a.

21 Jac. 21. By the Stat. made 21 Ja. c. 21. if any Inholder or Hosteler shall make any horsebread contrary to the statute, or which is not sufficient, lawful, and of due assise, or shall sell their provender or victuals at unreasonable prices, and that the offence be presented in the Sheriffs Torne, the Sheriff thereupon may determine the same, sc. may assess a reasonable fine upon the offendors, and may make out process against them, and being taken may commit them to prison, until they have paid their said fine.

And for the second offence the Sheriff may imprison the said offendors, by the space of one month, without bail; And for the third offence may cause him to be set upon the Pillory, without any Redemption of money. Vide Stat. 21 Jac. cap. 21. hic cap. 107.

Also by the Stat. made 13 R. 2. cap. 8. Sheriffs, (and all others which have the Assise of Bread and Ale to keep, and the correction of the same) shall take no amerciament or fine, but shall adjudge the offendors to that bodily punishment which the offence requireth, sc. to the Pillory in some cases,) and shall do execution thereof upon presentment of the offence. See hic cap. 4.

Also by the stat. made an. 13 E. 1. c. 13. such malefactors, in felony,

or trespass as were duly indicted and found culpable in the Sheriffs Torne, the Sheriff might have apprehended and imprisoned them, &c. and the apprehending, arresting, and imprisoning of Felons, being an authority given to the Sheriff by the Common Law, seemeth not to be restrained, by the intent and meaning of the said Statute made 1 Ed. 4. Hic fol.

But for that it was found to be a great trouble for the people to travel to the Sheriffs Torne, Therefore Court-Leets were granted to redress all manner of defaults there: And if the Leet redressed them not, then those defaults were to be presented in the Sheriffs Torne. 12 H. 7. fol. 18.

And this Court (the Sheriffs Torne) is now almost grown out of use, the reason whereof M. Wilkenson observeth to be, That Sheriffs have used to sell, both their Under-sheriffwicks, and Bailiwicks, to men of mean estate, that regard not the good of the Commonwealth, but altogether their own private gain and profit; whereby the King is many times much wronged and deceived (between the Undersheriff, and Bailiffs) of all his Waifs, Estrays, Felons goods, and other profits, which are things inquirable in the Sheriffs Torne, and which are taken up by the Bailiffs, and never accounted for, which thing as it may touch the Sheriff in his credit and reputation, so in his Oath: For when he entreth into his account for the payment of the Kings debts, he is then sworn to answer and account for all waifs, straps, felons goods, debts, perquisites and profits which seldom or never, either the King, nor yet the High-sheriff knows of, because these ancient Courts are not kept as they ought to be.

Divers other reasons (as I conceive) may be given, why the Sheriffs Torne is now grown so much out of use:

1. First, for that all (or the most part of) the business, or things inquirable in the Torne, or there to be dealt withall, are now usually and frequently enquired of, presented, heard and determined by and before the Judges of Gaol-delivery, &c. in their Circuits; And also before the Justices of Peace at the Quarter-Sessions; and again are presented, and many of them punished, in the Court-Leets of every Lord, &c.

2. Next, the small number of Suters now (at this day) compellable to appear at the Sheriffs Torne, by reason that there are almost in every Town, one or more Leets granted by the Kings of this Realm, in which Leets they do Enquire of, and redress the Common Nusances, Trespasses, and Grievances, done within the Precincts of the same Leets, &c. And besides such as before were Suters to the Sheriffs Torne, are now become Suiters to the Leet where they dwell, in regard of their Resiancy, and then no man is compellable to appear at two Leets, or Courts of one and the same nature, and only for his Resiancy.

3. Thirdly, the trouble of the Country people, to travel from all parts of the Hundred, to the Sheriffs Torne; whereas now they perform the same service, to the King and their Country, at home in their Leet.

4. Again, the trouble and charge of the Sheriffs, in keeping this Court, and making this their perambulations into every Hundred, and that twice in every year.

5. And again for that divers Rights, profits, and advantages; are now taken away from the Sheriffs, which anciently did belong unto them, or which anciently they at the least had and enjoyed, by reason of the Torne, (whereof in part see hic cap. 14. & 124.)

1. For the first true it is, that for the expedition of Justice in the Country

Country, and for the ease of the people, these Judges, and Justices, and the Court Leets, have had their beginnings and authority given them of later times: But withall we may observe in our daily experience, that notwithstanding the great care of the Reverend Judges, and Justices of Oyer and Termin. in their Circuits, and of the Justices of Peace in their Sessions, as also of the Lords in the Leets, for the discovery and redressing of the common grievances of the Country, yet for the most part they have little usually presented before them, but Omnia bene, except where any particular person will and do prefer and follow the cause against the offendors.

2. For the second, true also it is, that at the special requests and sute of divers Lords of Franchises, or of Mannors, and for the ease of their Tenants and Neighbours, Leets have been granted by Kings, within several Precincts, to the intent to redress all Nusances, trespasses and grievances, or other defaults there, which the Torne, was to enquire of and to redress; and that the Sheriffs Torne, and the Leet are all but as one Court, and that no man is compellable to appear, &c. at the two Courts, only for his Resiancy, And that there are now in every Town almost, one or more Leets, whereto all (or the most part of) the Inhabitants are become suters, so as there cannot now be so many suters to the Sheriffs Torne (by a great number) as anciently there have been: But withall we see many of these Leets are now much neglected, and sometimes not kept in many years together, in which case such as be Resiant within such Leets, may be compelled to come to the Sheriffs Tornes, which shall be holden within that Hundred (where such Leet ought to have been kept) during such times of neglect of the Leet; And again where the Leet of any Lord hath been, or shall be, seised into the Kings hands for any misuser, or other cause, all the people Resiant within that Leet so seised, shall now be compellable to appear, &c. at the Sheriffs Torne. Finch. 132.a.

3. For the trouble of the Country people, Surely, if they duly performed their service in this behalf at home in their Leets, it were well, but that is by common experience found to be otherwise: And for their travel twice a year at the most, to the Sheriffs Torne being always within the Hundred wherein they be dwelling, it is far less labour or trouble to them, than their going to their Assises, or Sessions of the Peace; And besides, this their service if it were well performed at the Sheriffs Torne, it would much ease, and expedite the business of the Judges, and Justices, yea and of the Country people themselves, at their Assises, and Sessions of the Peace.

But for the trouble and charge of the Sheriffs in keeping this their Court, as also for the profits thereof, which be now taken away from them, perhaps some Sheriffs may regard more their private gain than the common good and weal of the Country, (which also is now grown to be the common cause almost in all other men, aswell Officers as others) But yet it cannot be denied, that of Reward and Punishment (as one saith) all Commonwealths do consist, and that the care of Equity and Justice waxed cold, unless there be reward ready for virtue; And therefore though all Sheriffs be, or ought to be men of the best sufficiency in their Country, and such as need no reward for their care, diligence, travel, and charges, in that behalf, yet often times (now of late years) the charge and burthen thereof lieth upon men of no great Estate, yea upon such as find it overburthensome to them in regard of the charge: And besides, be they of the best and ablest sort, yet they must of Necessity imploy under them inferior Officers and Ministers, sc. their Undersheriffs, and others, who with more chearfulness and

care (yea and more honesty, and conscience) would (in all likelihood) proceed in their affairs, when they shall find due recompence or reward yielded them for their travel and pains.

And as it cannot be denied, but that the Sheriffs making and keeping orderly these their Circuits, Courses, or Tornes, through every Hundred within their Countries, twice every year, may not only themselves in their travel espy, and by their care enquire and learn out, but also may redress many grievances, common wrongs and injuries committed or done within their County, which now never come to publick light; So on the other side it is evident, that not only divers profits and avayls which anciently were belonging to the Sheriffs (and yielded to them as a Recompence or Reward towards their great charges by them in this their office sustained, as well in the Execution of this their Office, as upon their Accompts) are now taken away from them; But also that the charges of passing their Accounts, and their dangers otherwise, are grown so exceeding great, as that many, (yea of late most men) seek what they can, to avoid and keep themselves from the place.

CAP. 109.

The County Court, or Shire Court.

Incident al offic' del Vic'. The County Court (as well as the Sheriffs Torne) hath of ancient time been belonging to the Sheriff; And is incident and belonging to the Office of the Sheriff, and not to be severed nor granted away from it; nay the King by his letters patents cannot grant away the Office of the Clerk of the County Court, nor the fees, &c. thereto belonging; and if whilst the Office or place of the Sheriff remains void, the King (by his letters patents under the great seal) shall grant away the said Office of the Clerk of the County (or Shire Clerk of the County) or shall appoint any to occupy or use the same, yet when the King shall afterwards make one Sheriff, he shall avoid that grant. For that the County Court, and the entring of all the proceedings therein, are incident to the Office of the Sheriff, and the Sheriff is to appoint such Clerks under him in his County Court for whom he will answer at his peril. Co. 4. 33. Co. L. 168.

Sir Edw. Coke super Litl. fol. 168. saith, that the Sheriff in the time of the Romans, and before, was a Minister to the Kings Court of Law and Justice, And had then a Court of his own, which was the County Court, then called Curia Consultatus, &c. And that That which we call Comitatum, the Romans more latinely called Consulatum. And that whom the Saxons afterwards called Shireve, the Romans called Consul, &c.

Now Comitatus est locus publicus in quo vicecomes uniuscujusq; provinciæ jurisdictionem suam exercet. Hoc autem nomen inde sumpsit Originem, quod apud majores nostros Nobiles illi quos Comites dicimus, *istis* Provinciis à Rege præficiebantur, & jurisdictionem in easdem Exercebant. Dr. Cow. Int.

The Book called Speculum Justiciar. libro 1. cap. 15. *des Courts*, treating of the Sheriffs Court saith thus; *L'un Court tenent les Viscounts de mois en mois, ou de Cinq; Semaynes in Cinque, selon les greindure & largess de pais, Et ceux Courts sont appelle Counties, ou les Judgments se font per les Suitors, si brief nemy soit, Et ceo est per garaunt de*

de Jurisdiction Ordinary. And a little after he saith, *En les quels Courts ils ont Conusans de Dets, Covenants enfreints, & trespasses, & tals auters petits peches que ne passa my* 40 s. *in value.*

9 H. 3. c. 35. But now these County Courts (called also the Shire Courts) shall *The Times.*
2 E. 6. c. 25. be holden and kept from month to month: And shall be no longer deferred, but one month from Court to Court, and so the said Courts are to be kept every month, upon a day certain, and none otherwise: And so within the twelve Shires of Wales, their Sheriffs shall keep their
34 H. 8. 26. Counties monthly: And so within the County Palatine of Chester. 33 H. 8. cap. 13.

The necessity of keeping this Court every month, and upon a day certain, is by reason of the Kings Writs of Exigents which must be proclaimed or read there.

Process of Utlary, &c. the Exigent is to be directed to the Sheriff in this Court; And (in this County Court) the Sheriff (upon the Exigent) doth proclaim, or call the parties (sued in Courts above) to render their bodies, &c. Or else to be outlawed, and out of the Kings Protection, &c. *Terms de ley.*

And the Coroners are to sit with the Sheriff, at every County Court, there to give their Judgments upon Utlaries, &c.

Note that in London the Judgment upon Utlaries is given by the Recorder. Co. L. 288. 8.

Si un Exigent *soit agarde & retorne deins cie tardy temps, que les Countyes ne poient estre tenus, sil soit utlage sur ceo, il est Error.*

Et quant le Roy voet estre certifie de utlagar. que est in le County, donque Certiorare serra direct cybien al Coroners de County, come al Vic. de certifier ceo. Fitz. 245. 9. Finch. 116.

And as to these matters the County Court is a Court of Record. Finch. 116.

By the Common Law these County Courts may be kept or holden *The Place.* at any place, at the pleasure of the Sheriff, or Under-sheriff, so that it be within the County. And to this Court every man within the County may resort, to have knowledge of the Law, and to have justice there ministred to him.

But the Sheriff of Northumberland (by the Statute made Anno 2 E. 6. cap. 25.) is to keep the County Court of that Shire, in the Town or Castle of Alnewike, and none other place.

And the Sheriff of Sussex (by the statute made Anno 19 H. 7. c. 24.) is to keep and hold the Shire Court for that Shire, one time at Chichester, and the other time at the Borough of Lewes, and so to be kept Alternis vicibus, for ever: And every Shire Court there holden to the contrary, and all things therein done shall be void. Vide Dyer 135. Pl. 14.

And the Sheriff of the County of Chester, is to keep his Shire
33 H. 8. c. 13. Court, in the Shire Hall of the said County.

27 H. 8. c. 26. And the Sheriffs Shire Courts in Wales, of the County of Brecknock, shall be holden at Brecknock: of Radnor at new Radnor, and Presteon; of Mountgomery, at Mountgomery and Maghenleth; of Denbigh, at Wrexham; and of Monmouth, at Monmouth, and Newport; Alternis vicibus.

If the Sheriff shall give false judgment without the assent of the Suters, the party shall not have his Writ of false judgment, but must have his remedy against the Sheriff by bill, &c. Fitz. Bill. 12. 26 Ass. p. 45. N. br. 17.

The

The County Court is the Sheriffs Court, and the entry of all the pleas and procéedings there, are incident to the Office of the Sheriff, and cannot be granted or severed from the same; And the Sheriff is to appoint Clerks under him in this Court, such as he will answer for at his peril. Co. 4. 33. & 6. 11.

And note that every County or Shire is as it were an Entire body of it self, and entirely governed by one Sheriff under the King, and therefore to this county court all the inhabitants dwelling or abiding within the county or shire do owe sute by reason of their Resiancy there; And sute to this county court is called sute Real (and not sute service) and for default of this sute the party shall be amerced, and not distrained, &c. Finch. 115. 116. & Fitz 71. d. that it is the Kings Court.

And yet a man may hold Lands to do sute service to the County Court. Fitz. 158. a.

But for that at the Common Law, the Sheriffs used to make Proclamations in the Church or Markets, what day they would hold this their Court, and if any suter came not at the day appointed, they would amerce him, &c. for to remedy this, the Stat. of Merton, c. 10. first ordained that every free man might make his Atturney to do sute at this court, and for the better redress of this former mischief, presently after the Stat. of Marlebr. c. 18. ordained, that none should amerce any man for default of common summons, but only the chief Justices, Or the Justices in Eire in their Circuits: so that at this day no suter shall be amerced in the County Court for default of appearance, if there be a sufficient number to pass upon all the issues and matters before them depending; and it séemeth also that they ought to be specially warned (by the Bailiff) to appear, &c. otherwise they shall not be Amerced. Lectur.

Nec ascun serra Amerce ne distrein [illegible] estre d'ascun Enquest, si la soient assets en mesme le pannel, &c.

The Officer in this county court, is one of the Baylifs. Finch. 116.

Que Judge la. Also in these county courts (which are in manner as Court Barons) the Sheriff is no Judge, but a Minister. 6 E. 3. Br. Court Baron 11. 12, 19. Finch. 117.

Neither is the Steward Judge there. 39 H. 6. fol. 5. Br. Judges 15.

And yet in ancient times the Sheriff and Coroners have béen, and still are Judges in the County Court, in pleas which touch the Crown. Abr. d'Ass. 68. Finch. 115. Sée hic cap. 4. & 3. As also in Exigents.

But (now at this day) as to all Actions and Proceedings by a Justicies, or Writ, As also in other sutes between party and party, which are there by plaint without Writ, the Freeholders of the County or Suiters are Judges there: And as to Outlawries, the Coroners are only Judges, sc. the Coroners are only Judges there to give Judgment upon the Kings Writs of Exigents (sc. if the party cometh not in upon the 5. Proclamation (Or at the 5 County) then the Coroners shall give Judgment that he shall be out of the Kings Protection, &c.) and yet if they be Freeholders (as by Law they ought to be) they are also Judges in all actions there sued. Sée 6 E. 4. 3. 7 E. 4. 23. 39 H. 6. 5. & 26 Ass. pl. 45. Br. Court Baron 11. 12, 19. & Justicies 3. 6. Co. 4. 32. & Co. 6. 11. Br. Judges 15. & Justicies 6. Finch. 117.

And although the Suters be Judges there, yet all the judgments there shall be pronounced by the Sheriff, upon actions or suits there: And see Co. libro 9. Preface. Those courts are called Counties where the judgments are given by the suters, if there be no Writ; so that where the suits in this court are by plaint without Writ, the freeholders or suters are to give judgment (sc. to find the party guilty, or not guilty, &c.) and the Sheriff is thereupon to pronounce the judgment; but yet if the suit be by Writ, there the Suters also are Judges. Finch. 117.

But

But Sheriffs shall not pronounce any judgment, nor suffer any to be pronounced in their County Court, unless they be thereunto required by all the Suters which shall be at the Court, stat. Westm. 1. Cap. 32. quære of the use herein.

Neither can the Sheriff (in their County Court) do any act without the assent of the Freeholders or Suters (for that it is but a Court Baron) and if the Sheriff shall do any thing there without the Suters, an action of the case lieth against the Sheriff, quære tamen.

Where a Writ de Nativo habendo, shall go to the Sheriff to hold a plea of a matter, there he is (by some opinions) both a Judge, and an Officer: but where the Nativo habendo is directed to him, returnable in
7 E. 4. 23. Banco, there the Sheriff is an Officer, and no Judge, 11 H. 4. Br. Offi. 36. but quære, For in a Justicies the Writ is, quod Justicies, T. &c. And notwithstanding that the Writ be directed to the Sheriff (to hold plea of the matter) and not to the suters, yet the suters are Judges: And yet the Justicies is a Commission to the Sheriff to hold plea, as well as the Writ de Nativo habendo, Br. faux imprisonment 30.

But the reason why the Writ is directed to the Sheriff, is, for that
Co. 6. 11. the County Court is the Sheriffs Court, and therefore great reason that the Writ should be directed to him, to whom by Law the Court appertaineth; To the intent that he should see two things performed there, sc. First to hold his Court, that justice and right may therein be done to the parties; secondly, that he may be answered of those profits of his Court which appertain unto him: but yet when he holdeth plea by force of the Kings Writ, this doth not change the nature, nor the jurisdiction of the Court, For the Kings Writ cannot alter the jurisdiction of any Court Baron, County Court, or Hundred, &c. to make them Courts of Record, all which are mean, or base Courts by the Common Law, and have judges authorised and appointed in them by the Law, And therefore all things determined in these Courts ought to be determined by the Judges of the same Courts, sc. by the suters only.

Also see the Book 2 H. 4. 24. That the Sheriff cannot justifie to arrest or imprison one by a Writ de Nativo habendo, or by a Justicies, for those Writs are but commissions to hold plea, and the Sheriffs Court by these Writs is not become a Court of Record. Br. Faux. impris. 30.

Westm. 1 32. See Co. 8. 30. W. 27. By the statute 3 Ed. 1. cap. 32. No Sheriff shall suffer any Barreters, nor any Stewards of great Lords, nor other (unless he be Attorney for his Lord, or Master,) to make sute, or to maintain any Actions, or quarrels, Nor to give judgments in their County Courts; Nor to pronounce the judgments, if he be not specially thereunto required, and prayed of all the suters, and Attorneys of the suters which shall be at Court: And if any do, the King shall punish grievously both the Sheriff, and him that so doth. See hic antea fol. *Barretors.*

Any person may make a general Attorney, to sue for him to them in all pleas, moved for them or against them, in the County Court before the Sheriff, or in any Court Baron, &c. See stat. 13 E. 1. c. 10. & Nat. bre. 19. 20. *Attorney.*

11 H. 7. c. 15. Nota, *que al Common Ley (devant le stat. de* Gloc. 6 Ed. 1 cap. 8.) *le defendant in action de trespass ne puissont aver fait Atturney de appear pur luy, &c. le reason fuit, pur ceo que sils fuer' convicts de trespass, & fuer' present, ils fuer' maintenant mise al Gaole, tanque ils ont fait. fine al Roy, & gree al party: mes ore per cel stat. de* Gloc. *ils poent fair Atturneys in cases de trespass, & sils soient atteint de trespass in lour absence, fuit mande al Vic. un* Capias *de prender le party* (sc. *le def.*) ad faciendum

finem

finem cum Rege; *Et donque le Vic. ne deliver eux, tanque ils ont fait fine al Roy, & gree al party :* Sed si soit present.

Auxi per le Common Ley (quant ascun est command per brief le Roy de appear, &c.) les parties plt. & def. tenant & demandant al primer appearera in proper person in chescun Court, & nemy per Atturney; mes apres que il ad un foits appear, les Courts le Roy al Westm. *& touts auters Judges que tient ple per brief, poent admit luy per Atturney, auterment quant plea fuit tenus sans breif, &c.* Finch. 63. Co. l. 128.

Mes ore per le dit stat. de Westm. 2. cap. 10. *fait* Anno 13 E. 1. *est ordein que chescun person poet faire un general Atturney, de suer pur eux in touts plees, move pur, ou vers eux, &c. devant les Justices al* Westm. *ou in Bank le Roy, ou devant les Justices in lour Circuits, &c.*

Uncore in Causis Criminalibus *le personal appearance des parties est requisite pur le hainousness del offence (come in Appeals de Murder, de Robbery, de Rape, ou le Mayhem) Et pur ceo in ceux cases nul Atturney serra resceive, Ne auxi in nul matter de Corone, ne in ascun Indictment.* Vide *le dit stat. de* Gloc. cap. 8.

Auxi in ascun plees queux sont Civil, home ne poet faire Atturney, Come in quid Juris Clamat. in Cessavit, Capias ad Computandum, &c.

Auxi enfant ne poit faire Atturney, mes Gardian, ou prochein Amy. N. br. 20.

Auxi home utlage ne poet appear per Atturney, come fuit tenus. M. 37 Eliz.

Mes le Roy poet Licens ascun person a fair Atturney in ascun action quicunq; Fitz. 25. c. & Finch. 63.

Auxi Nota, que breif de Atturnato fac. non datur per Statutum, in visu Franciplegii, Nec in Turno vicecomitis. Vide Register. 172.

Also it appeareth by the Stat. of Westm. 2. cap. 36. that Sheriffs in their County Courts, or their Officers, have formerly sollicited and procured suits in their Courts against poor men, procuring other persons to bring against them Writs, and Plaints of account, Dett, Detinue, Trespass, and the like, by which means they compelled the poor men to follow or resort to their Counties, until they made fines with the said Sheriffs at their wills, for remedy whereof that stat. provideth, that if any Sheriff, Bailiff, or other, be lawfully convict thereupon, they shall make a fine to the King, and besides shall yield treble damages to the party grieved. ☞ *Et le dit. Stat. voet ouster,* Si quis per hujusmodi falsas quærimonias fuerit attachiatus, replegiet districtionem suam sic captam, Et poni faciat Loquelam coram Justiciariis, &c. sc. *quant un est attache in tiel manner, il avera un* Repleg. *& remover le plee devant les Justices al* Westm', *hors del County Court ; Et si le Vic. ou Bailiff, que attache le party in cest manner, vient & avowa le prisel per force d'un Pleint (sue devant luy per un tiel envers le plt.) de Det, Detinue, ou trespass, &c. (come le case est) donque ceo stat. done al plt. un Averment,* sc. *adire que le pleint fuit move envers lui malitiose per procurement & abetment del Vic. ou auter def. le quel il voet Aver, & preia ses Damages. Et si ceo soit trove, le plt. recovera ses treble damages, & le def. ouster al prison, & fera fine al Roy, &c.*

Et nota, que cestuy que est attache in tiel manner, poet aver un Repleg. (ut supra) *Ou brief de Trespass mes sil port breif de Trespass, la il recovera forsque single damages. Et le def. ne serra fine.*

Issint si le plt. ne remove le plea hors del County Court, nient obstant que le def. soit attaint in le County, il navera le punishment done per ceo stat.

Mes si un vient al Vic. &c. & dit que un tiel ad fait a lui trespass, ou doit a luy un certein some de argent, & preia que il poet aver un pleint devant luy envers l'auter, Et le Vic. &c. dit que sil voet suer devant luy, il avera come le Ley voet, Et sur ceo l'auter enter un pleint devant luy envers son adversary, ou detter, per force de quel le def. est attache, la sil voet suer come

ceo

ceo stat. voile, & le case monstre, il recovera rien, Car ceo fuit primerment move per cestuy, que suist; Et le stat. ne parle mes lou le pleint fuit move primerment per procurement del Vic. &c. Vide 41 E. 3. Fitz. Avowry, 78. & 9 E. 4. fol. 23.

Again it appeareth by the stat. 11 H. 7. cap. 15. that afterwards Sheriffs or their Officers in their county court, did often practise divers other misdemeanours, by entring Plaints there subtily and untruly (of Det, Covenant, Trespass, and the like) unknowing to the plaintiffs (or persons in whose names the same plaints were entred, yea sometimes the same persons being dead) and only to the intent to extort from the defendants money at every of the said Courts (depending the said plaints) for their defaults of appearance there, and where the Def. were never summoned nor warned to the said Courts, nor ever had knowledge of any such suit or plaint depending against them; and also by using other notable extortions; For remedy whereof the said stat. of 11 H. 7. hath provided as followeth.

11 H. 7. c. 15. The Sheriff, Under-sheriff, or Shire-Clerk, nor any other person in their name, nor by their commandment, shall enter any plaints into their Books, (in their County Court) in any mans name, unless the party Plaintiff be in his proper person present in the Court; Or else by sufficient Atturney or Deputy that is known to be of good name and disposition; And the Plaintiff shall find pledges to pursue his plaint, being such persons as are known in that County: And also the plaintiff shall have but one plaint for one trespass, contract, or cause: And if the Sheriff, (Under-sheriff, or Shire-Clerk) shall enter or cause to be entred any more plaints than the Plaintiff supposeth that he hath cause of action for against the Defendant, then the Sheriff, Under-sheriff, or Clerk, that doth enter or cause to be entred any such plaints contrary to this statute, shall forfeit for every default forty shillings, one half to the King, the other half to him that will sue and prove the same, by action of debt, or information, &c. *Plaints entred there.* *Plegii de prosequendo.*

After such plaints entred (in the County Court) against the Defendant, the Sheriff (Under-sheriff, or Shire-Clerk) shall make sufficient Precepts, directed to the Bailiffs of the said Hundred, to attach (summon or warn) the Defendant to appear and answer to the said plaints, And if there shall be any default in the said Bailiffs of the Hundred, in not warning of the Defendant to appear, or in other executing of their said office (against any Defendant in the Sheriffs Court, according to the tenor of their Precept) then the said Bailiffs shall forfeit for every default forty shillings to the King, and to be convicted thereof by the examination of any Justice of Peace, upon complaint thereof to them made by the party grieved; Or else the party grieved may sue in the Eschequer, &c. by Action of Debt, or Information, and there for every such default proved against the Sheriff, &c. the said Sheriff or other Officer shall forfeit forty shillings, the one half to the King, the other half to the party grieved. *Precepts to warn the defendants.* *Defaults in the Bailiffs.*

Also the said Sheriff (Under-sheriff, Shire-Clerk, nor their Deputies) shall make no Estreats to levy the said Sheriffs amerciaments (or Shire amerciaments) until that two Justices of Peace (whereof one to be of the Quorum) have had the oversight of their Books, and that the Estreats be indented between the said Justices of Peace and the said Sheriff and Under-sheriff, and sealed with their seals; the one part to remain with the said Justices, and the other part with the Sheriff or Under-sheriff, to the intent they may understand, if there be any deceit or untrue demeaning in them, in making of their Books. *Estreats for the Shire amerciaments.* *Viewed, and sealed by two Justices of Peace.*

The Balliffs shall be sworn. Also those persons which shall be gatherers of the same amercements (as Balliffs or other Officers) shall be sworn by the said Justices of Peace, that they shall gather or take no more money than is forfeited, and contained in the Estreats, sealed with the seals of the said Justices of Peace upon the pain aforesaid; the same gatherers to be convicted by examination of the said Justices of Peace, or one of them, as before is rehearsed: see my Countrey Justice, tit. Sheriffs. Ibid.

CAP. 110.

Of what matters or causes, the Sheriff may hold Plea in his County Court.

Sciendum est quod omnia placita, sunt vel Placita.
- Realia, sc. de terris, &c. *in que home recovera ascun realty.* Litt. 500. & 492.
- Personalia, sc. de Debitis, transgressionibus, & *tiels*; *de ceux* tantum *le Vic. tener plea, per plaint.*
- Mixta, quæ utrasque tangunt materias; *sicome Assise, & action de Wast.* Littl. 491.

Actions Reals sont deux.
- *Possessory.*
- *Auncestreil.*

Placita personalia sont de 3. sorts.
- Transgressio facta contra Coronam Regiam; Et hæc tangit vitam, vel membrum.
- Transgressio facta contra pacem Regiam; sicut de verberatione, de clauso fracto, de arboribus succisis, de bonis asportatis, & similibus.
- Aut est de injusta Detentione Catallorum, replegiare, de debitis, & de similibus.

Plees personals poet auxi estre divide en deux sorts;

Lun est meere personal plea, en que nul ad interest mes mesme les parties (sc. *le plt. & de def.*) *sicome actions de Dett, Detinue, &c.*

Lauter est mixt en le Corone; sc. *lou le plt. & le def. n'ont sole interest in l'action, Mes le Roy ad interest in ceo auxi, pur aver fine; Come in action de Trespass* quare vi & armis, &c. *ceo est action mixt, &c. Et de tiels le Vic. ne doit tener plea, &c.*

Auxi touts Offences poient estre devide in deux sorts
- *Private.*
- *Publique.*

Private Offences sont tiels que sont fait per un home al damage del auter; Et ceux sont remedy per Original brief, Bill, ou pleint.

Publique Offences, sont tiels queux sont commit vers le Roy, & le Commonweale; & ceux sont remedy per voy de Inditement, ou Information; Et ceux sont inquire per le Vic. in son Torne, mes ne medler ove ceux in le County.

Mr. Selden sheweth, that in the time of the Saxons, most suits in the Secular or Common Law, were Uiscountiel, and held before the Sheriff in the County Court. Seld. pag. 412.

Also he saith, that in those ancient times, a Jurisdiction of causes

Eccle-

Ecclesiastick was also exercised (joyntly by the Bishop of the Diocess, and by the Sheriff of the County) at the County Court, where the Bishop and the Sheriff both sate, the one to Judge according to the Laws of the Kingdom, and the other to direct according to Divinity. Ibid.

But at the Norman **Conquest, the holding of Ecclesiastick pleas in the County Court was taken away.** Ibid. & pag. 413, 414.

Nota quod Placita de Latrociniis, de Hutesio, de plagis & Appellis (quæ sunt Contra Coronam Regiam) Coram Coronatoribus & Vicecomite incipere possunt in Curia Comitatus; Sed ad præsens, licet olim, ibi non possunt determinari, Artic' ad nov. Narr. 77. vide plus Bracton libro 3. cap. 35. & Radulphus de Hengham, Capit. Justic. tempore Regis Ed. 1. Plaints there.

Sed parva brevia de Nocumento, & alia vicecomitalia, & placita de verberatione, & alia quacunque transgressione, ubi periculum mortis, vel membri, non evenit, & ubi quæritur transgressionem non esse perpetratam contra pacem Regiam; ac placita Debiti, & Detentionis, sub summa quadraginta solidorum, ad vicecomitem (& ad alias Curias inferiores) pertinent Audiendum, & Terminandum, *Ibid.* Nusance. Trespass. Debts. Detinue.

Ac etiam in quibusdam Casibus, Coram Viçecomite, placita terræ possunt placitari; Quemadmodum si quis deficit de Recto in Curia alicujus Baronis, in breve de Recto in tali Curia portato, Ea de Causa falsare poterit Curiam illam, & per idem breve placitare in comitatu, Quia illud breve in se hoc requirit, cum dicat, Et nisi fecerit, vicecomes noster Cantebr. faciat, ne amplius inde clam' audiamus pro defectu recti, &c. *Ibid.* & Rad. de Hengham.

Appeales de Robbery & de auter felonies, Maihem, & Rape, poet estre sue in le County Court, per bill, devant le Vic. & ascun un des Coroners. Stamf. 52. 55. a. *62. 64. 67.* & Finch. 115. 116. & Stat. Westm. 1. cap. 10. *& Terms del Ley.*

Mes sur Appeale sue la 21 Sureties de prosequendo serra primes trove al Vic. Stamf. 64. a. & Britton fol. Finch. 5. 115.

Le proceedings in tiels appeals, est come in Appeals in Bank le Roy, sc. Capias, & Exigent, &c. Finch. 113. Vide Stamf. 64. a.

Mes, divers ont tenus, que sur Appeal commence icy, coment que le Vic. & Coroners poient agard Proces vers le Appellees, &c. uncore sils appear que ils ne poient mitter L'appellees a respounder, Mes solement eux garder in prison, & hoc per reason del stat. de Mag. Chart. 17. *quel veies* hic antea, cap. 4. Stamf. 64.

Auxi le Viscount ove le Coroner ad power de prender le Appealee de Approver sc. *de felony fait in ascun County D'angliter.* Stamf. 52. b. d.

Sur Appeals de felony, &c. devant le Vic. & Coroner, le Vic. & Coroners doiet Irrotulare ceo sc. Annum, diem, & locum, *& touts les parols del appeal, & les nosmes des pledges de prosequendo, & auters Circumstances, & certifier ceo al Justices.*

Mes quant al plees de Latrociniis (seu furtis) dicitur *que ceo parol ne intend de furto que fuit Capital, Mes tantum de tortious prisel d'ascun biens, sicome le dit stat. de* Westm. 1. cap. 36. *parle.*

Auxi dicitur *que ceo parol* Hutesio, *ne fuit prise icy pur Hue & Cry, Mes potius pur scoldings ou brawlings per que le peace del pais fuit disturbe, de ceo parol* Hutin.

Nota quant al ceux matters de Appeal, & al Judgments done in ceo County Court sur Exigent (ut hic antea) le County Court est Court de Record; Car Certiorare gist al Coroners a certifier le Record del Utlary (uncore quere car le Vic. ad le custody de cel Record. Dyer 223. & Finch. 116.)

Auxi Capias & Exigent gist in Appeal per bill sue icy, ut supra: *Et semble que breif de Error gist (& nemy faux Judgment) sur Error en l'appell'.* Finch. 116.

But Mr. Bracton, libro 3. fol. 154. sheweth, that in his time, in a suit commenced in the County Court, the Plt. ought not to complain de pace Domini Regis fracta; which well agreeth with, and explains the Law as now it is used, &c. that the Sheriff cannot hold plea of Trespasses Contra pacem Domini Regis.

And yet at this day Sheriffs in their County Courts (before themselves only, without the Coroners) by way of Plaint, without any Writ to them directed, may hold Plea of, and may examine, hear, and determine certain smaller personal actions, as of Debts due upon contracts, &c. Detinue of Chattels, Assumpsit, Covenant, Nusances, taking of cattel, and detaining of them, or Repleving of beasts, Trespasses, and the like, hapning, made, or done, within their County, and where the Debt or Damage is under 40 s. and the Plea determinable by wager of Law; And all this (except in a Replevin) the Sheriff may do by the Common Law. Finch. 116.

But the Sheriff cannot by way of Plaint, without Writ, hold plea in a Replevin, by the Common Law. Dyer 246. Finch. 116.

Neither can the Sheriff by way of Plaint hold Plea in an Accompt, although the sum be under 40 s. Finch. 116. Fitz. Accompt 29. (the reason is, for that the Sheriff hath no authority to assign Auditors.) And yet Fitz. 117. b. that if one entreth into my Land to my use, and receiveth the profits thereof, &c. I may have an Action of Accompt for this in the County; *Mes ceo semble destre per breif de Justicies, & nemy per Pleint.* Also at this day the Sheriff may make Replevins, and may in his County Court hold Plea thereof, by Plaint (without Writ) and may there determine the same, so that the damage exceeds not the sum of 40 s. And this they now may do by force of the stat. of Marlebr. c. 21. & Westm. 2. cap. 2. see more hereof hic postea. But if the damages be above 40 s it seemeth the Sheriff must then hold Plea by a Justicies, and not by Pleint. Quære.

Also concerning these former Actions of Debt, Detinue, Assumpsit, Covenant, and Trespass, &c. if the Debt or Damage be above 40 s. then they are not to be sued in the County Court, but by a Justicies.

Neither can they hold plea in their County Court, of any Debt due by, or upon Record in any Court of Record; (But otherwise it is of Debt upon Record in the same Court) Nor Debt due upon bond, &c.

Also in an action of Trespass there holden, no force shall be supposed, for then a Supersedeas lieth. Fitz. 299. d. Finch. 116.

Neither can they hold plea in their County Court, of any Disceit, Maintenance, or forger of false Deeds.

Neither can they hold plea of Detinue of Charters concerning freehold. Fitz. 138.

Neither can they hold plea of any freehold, by Plaint, where the freehold cometh in question (but by a Justicies.) *Mes si Judgment soit la done de Franktenement sur un pleint*, dicitur *que il est bon, tanque il soit reverse per brief de faux judgment*, sed quære *de ceo, Car quant al Real actions in queux terr. serra demand, le Vic. ne est competent judge, Et son proceedings in tiels cases* est Coram non judice.

Auxi si ascun plea tonchant Franktenement vient en debate in ascun action personal, le County Court est mise hors del jurisdiction, & le party est mise de suer al Common Ley.

Issint serra quant forrein (& faux) plea est pleade, (come performance del Con-

Condition, al London, *si soit sur obligation, &c. Ou ater forrein plea.) Mes semble reasonable a denier eux de issint pleader, Mes de forcer le def. pour Gager lour Ley; Car auterment les Def. poient per tiel lour faux pleas, ouster le Vic. de jurisdiction, Et fair touts Suits in le County Court d'estre de petite effect.*

Si le Vic. voile tener plea in son County, Ou de personal choses ouster 40 s. *Ou de Real choses, sans brief de justicies, le party poiet Eslier d'aver brief de faux judgment; Ou auterment poet disobey tout que serra issint fait come chose voide, & fait* Coram non Judice.

Vide plus hic. Cap. 113.

Et Nota coment les Viscounts en lour County Courts avera Conisans de touts plees queux sont desouth 40 s. *(come est avant dit,) & queux sont determinable per ley Gager, uncore ceux petite plees fuer' auxi (al Common Ley) determinable in Court le Roy, tanque le stat. de* Gloc. Cap. 8. *que ceo restrein pur le Ease del people, Et de superior Judges & Courts, queux sont suffic. trouble ove greindour affairs: Et pur le melior assurance de ceo, le dit stat. de* Gloc. *voet que le Plt. affirme per sa foy, que les biens prises, ou les Damages, vailont* 40 s. *al meins* (sc. *in suits devant les Justices,) Mes ceo Serement nest ore in use, & ceo pur l'advantage le Roy (come semble) cibien in actions de trespass, come del Det.*

Glocester 8. By the stat. made 6 E. 1. c. 8. Sheriffs shall hold pleas of trespass in their Counties, as they have accustomed; sc. where the damages do not amount to the value of 40 s. Or that the Plea be not laid to be vi & Armis; for this Statute is a confirmation of the Common Law.

And by the Statutes of 27 H. 8. c. 26. & 34 H. 8. c. 26. the Sheriffs of the Counties of Wales, shall hold plea of Replegiare, and all other suits, and plaints, under forty shillings, in their County or Shire Courts, in like manner, as all other Sheriffs do within the Realm of England.

Finch. 116. N. br. 48. But this County Court cannot hold plea, where the debt or damages is forty shillings or above, unless it be by a Writ of Justicies, *Justicies.* (out of the Chancery) which the Plaintiff may procure if he will, to be directed to the Sheriff: And that Writ of Justicies is a Commission to the Sheriff to hold plea of any sum whatsoever, as well above 40 s. as under that sum; Neither is this Writ of Justicies retornable, but shall be termined before the Sheriff in his County Court.

CAP. III.

IN *Courts le Roy touts suits perenter party & party commence per breif Original, mes in le County Court (come auxi in auter inferior Courts) ils commence per Pleint;* sc. *Cestuy que voile suer un auter icy, il poet aler al Seneschal, ou Officer de mesme Court (en que il purpose de suer) Et Enter son pleint la, accordant al nature de son Case; Ou auterment il poet ceo fair in plein Court devant le Vic. ou Seneschal, &c.* 9 E. 4. fol. 48. *que cel Entree del pleint poet estre devant le Vic. en son meason, ou al ascun auter Lieu deins le County; mes potius devant luy in plein Court: Et accordant a cel darein est le liver.* 21 E. 4. *que doit estre in plein Court,* Et Sedente Curia.

But no Sheriff shall enter any Pleint in his County Court, Except that the Plt. be present in person, or by an Attorney or Deputy known to be of good name, and that he find persons known, to be Pledges de prose-

prosequendo; and he must have but one Pleint for one Trespass or Contract. 11 H. 7. cap. 15.

Le plt. apres son Pleint issint Enter, doit procure le Proces del Court, sc. *(in Cases de Det, Detinue, & Covenant) un Summons, per que le Bailiff serra command de Summoner le def. d'appear al procheín Court, de respondre al plt. en son dit Pleint, &c. Et le Vic. doit fair suffic' warrant, precept, ou proces, a son Bailiff de Summoner ou Attacher le def. accordant* sub pœna 40 s.

Al procheín Court le Seneschal causer les parties d'estre call, primes le plt', & apres le def. Et si le plt. appear, & le def. fait default d'appearance sur le summons, & que summons soit Retorne per le Bailiff, donque auter Proces issera vers le def. sc. *Attachment, &c.* Vide hic postea.

And in this County Court the actions must be called, as they are in a Hundred Court, or in a Court Baron.

Stile of the Court. Cantebr. ss. Prima com. A. B. militis vicecom' comitat. præd. (**and so the next Court,** Secunda com. A. B. &c.) tent' apud castrum Cantebridgiæ, tali die & anno, &c. **setting down the Kings stile at large.**

Then the Bailiff must make an Oyes, and say thus, (three times before the Court) Essoins and Proffers *pur cest jour:* **And then he must say, If any man will be essoined, or enter any plaints, let them come in and they shall be heard.**

Essoin est excusation de default ou absence de party; sc. *in Cases lou action est port, & le plt. ou def. ne poet bien appear in Court al jour, &c. donque il poet estre Essoin ou excuse (pur les causes hic apres express) de saver son default. Et ceo poet estre auxi bien pur le plt. ou demandant, come pur le tenant ou def.* Spec. Justic. libro 2. cap. 20. Co. L. 128.

Le droit de chescun Essoin est que le cause de le absence soit Inroll ove le Nosme del Essoinor, issint que si le party adverse ou son Atturne voile traverser le Cause, a ceo est resceiveable; & sil soit trove faux, donque le Essoin est turne en un default. Ibid.

Uncore Essoin de Malo veniendi *(que est le Common Essoin,) coment que ceo soit fait fauxment, nul remedy est done pur ceo, car est forsque petite delay, & ideo le plus suffre.* Ibid.

Delays. *Et Nota, que le tenant ou def. poiet estre Essoin, aut in chescun Original brief devant appearance, ove cause, ou sans cause, per que grand delay ensue al plt.*

Et ascun foits le def. poiet estre Essoin apres un Essoin; Come in un Real action vers tenant pur vie, al retorn del Original le tenant est Essoin, le demandant doit adjourn come, ou 9. common jours del Retorn serra done (per que dimid' Anni est spent;) Et al jour del Essoin, le tenant voet demand le view, & donque 9. auter jours de retorn serra done. Et al jour del view le tenant poet estre Essoin, Et donque preia Aid de cestuy in reversion; Et al jour del retorn del Summons le Preyee in Aid voet estre Essoin, & la auter 9. jours de common retorn serra, &c.

Essoin. **If any man will be essoined, it may be entred as the case shall require,** sc.

I. S. essoin' est
- quia in servic' Domini Regis. *Icy l'essoinor serra jurus.*
- quia est ultra mare. *Per ceo le def. avera* 40 *jours.*
- quia non potuit venire propter altitudinem aquæ.
- quia est de malo lecti. **Or**
- quia ægrotus, vel similia.

There be other manner of essoins which are in plea, the one after summons or attachment, and the other after issue joined, which are to be entred after this manner.

1. *I. S.*

1. *I. S.* Qui summon. fuit (vel attach' fuit) essendi hic, ad hanc Curiam, ad respondend' *T. K.* de placito debiti (vel similia) modo esson' est per *D. R.* &c.

2. *I. S.* Qui habuit diem usque ad hanc Curiam ad exitum junct' inter *T. K.* querent' & *I. W.* defend' modo Esson' est per *D. R.* &c.

And in like manner the Plaintiff may be essoined if he will.

And if the one party be essoined at one Court, the other party may be essoined at the next Court.

Whosoever will cast any essoine, he must come at the beginning of the Court, when proclamation is made, or else he ought not to be received. See Statute de Essoines 12 E. 2.

But note, that the party cannot be essoined in these cases following, sc.

If the party himself be seen in Court. Stat. de Ess. 12 E. 2. Dyer 268.

If the party have an Attorney (in the same plea) present in Court. Except they be both essoined.

If the party made default at the last Court before.

Or if the party come in by Cepi corpus, **or Distress.**

Speculum Justic. l. 2. c. 10.

Auxi in ceux cases subsequents home ne serra Essoin, sc.

Nul apres Appearance (in certein actions) Vide stat. 3 E. 1. 41. & 13 E. 1. cap. 28. *Et ceux statuts expound* Abr. d'Ass. fol. 91, 92. & Finch. 64.

Nec in Admeasurement de pasture.

Nec in Dower. Stat. de Essoin.

Nec in Recordare fac' Loquelam.

Nec in Replevin, pur l'infinite delay.

Nec in Scire facias. *Nec in* Venire facias.

Nec apres jour done ad precem partium. 13 E. 1. cap. 27.

Nec apres Essoin nient garrant.

Nec ou le plt. n'ad trove suerty a pursuer. Stat. de Ess.

Nec quant le jour n'est venue; Ou est past. Stat. de Ess.

Nec Ou nul Summons est testemoigne. Stat. de Ess.

Nec celuy que ne fuit nosme en le breif. Stat. de Ess.

Ne nul que adversary est mort.

Nec celuy que est adjorne de jour en jour.

Apres issue join, forsque un Essoin serra allow. 52 H. 3. 13. 13 E. 1. 27. *mes ceo serra intend del Common Essoin, Et auxi* tantum *del def.* Dyer 224.

Auxi ceux persons desouths nosme ne serra Essoinors, sc. *Enfant deins age; Ne femes, Nec persons Excommenge; Ne parties in mesme plee; Nec atteints de faux delay; Nec Essoinours auterfoits nient garr.*

Vide plus de Essoins. Bracton lib. 5. fol. 335. &c.

Note also, that none shall need to swear to warrant his essoin. 52 H. 3. ca. 19. *Mes dicitur que ceo est intend de Common Essoin* (sc. de Malo veniendi) *& de nul auter; & que devant ceo statute si ascun ad ject Essoin par auter, il doit faire Serement que cestuy que il ad Essoin fuit malade, &c. issint que ne poet vener.*

Apres les Essoins sont lie & allow, donque ils proceeder a les Plees. Et primes le plt. serra demand & call, (que doit estre prist al Chescun Court pendant son plea;) Car si le plt. ne soit prist de pursuer son suite & Pleint, & de responder quant il est demand, le Court doit agard luy come Nonsuit en son pleint, Et le plt. mesme, & ses Pledges d'estre amerce, Et le def. ira sans jour.

Si le plt. soit prist, donque le Bailiff serra demand si le def. soit Summon ou nemy; Et le Bailiff est de fair son Retorne quid il ad fait in ceo, &c.

Nes nota, que le plt. ou def. poet appear per lour Attorneys.

Si le def. ne appear, donque la issuera vers le def. un Attachment & apres Distringas, *& apres un* Alias, & Pluries Distr' : *Et sic Proces per Distress infinite serra fait & issuera vers le def. tanque il appear.*

Et quant ambideux les parties appear en Court, donque le plt. doit mitter eins son Declaration, monstrans in ceo son grievance vers le def. &c.

Mes primes concernent les Proces de ceo Court, Et apres serra dit les auter proceedings la.

Process.

Proces. First, the like Process or Precepts as are made out of the Hundred Court or Court Baron, are to be made out of the County Court mutatis mutandis, viz. a Summons, Attachment, and Distress infinite, which also is the Process at the Common Law; and these are to be made in the Sheriffs name, and to be directed to his Bailiffs. 34 H. 6. 49. fi. 116, 117.

In the Justicies or Vicountiel Writs, the Proces is a summons by the defendants goods, an Attachment, and Distress infinite; Or if upon the summons a Nihil be returned, then a continual Capias. Finch. 352.

And note, that a Precept or Commandment by parol only in a Court Baron is good enough, without any Precept in writing. 10 H.7. Br. Proces 184. Finch. 248.

The Forms of these Precepts are as followeth.

A Summons.

Summons. PRæceptum est ballivo ibid. quod sum' fac' *C. D.* quod sit hic ad prox. cur' ad respond. *A. B.* in placito debiti (or detentionis, conventionis, vel similia.) Teste, &c. *Cantebr.*

Alias. *R. S.* Armiger vicecomes comitat. prædict. ballivo hundred' de R. salutem. Quia *I. S.* ad com' meum tent' pro comit' prædict' queritur versus *I. D.* in placito debiti triginta solidorum (vel in placit' transgr', vel in placito detentionis, &c. *sicome li pleint est*) Et invenit plegios de prosequendo, &c. * Ideo tibi præcipio, quod summ' fac' præf. *I. D.* quod sit hic ad prox. Comitatum meum tent' apud C. ad respond' præfat. *I. S.* in placito præd. Et habeas ibi hoc præceptum, & qualiter, &c. datum 8. die August. ann. Regni Domini nostri, &c.

Al prochein Court apres le Summons fait, le Seneschal causer les parties d'estre call, primes le plt. & apres le def. Et si le plt. appear, & le defendant fait default d'appearance, & que le Summons soit Retorn per le Bailiff donque auter proces issuera vers le def. sc. *Attachment, &c.*

Nota. *que le primer Original Proces, in plees de Dett, Detinue de Chattels, Covenant, & touts autres personal actions, est un Summons, & apres Attachment, & apres Distress infinite issuera, Sinon in plea de Trespass, in que Attachment gist en le primer Original, & apres Distress infinite.* Hic cap.31.

Et tiel Attachment & Distress serra execute in mesme le forme, cybien en Pleints de Dett, come de Trespass.

An Attachment.

Cantebr. PRæceptum est ballivo ibidem quod attachiat' *C. D.* per omnia bona & cattal' sua, quod sit ad prox. Comitatum meum, ad respond' *A. B.* de placito debiti, &c. vel transgressionis.

Or

Or this attachment may be made more amply as before (almost word for word usque at not' *) Ideo tibi præcipio quod attachias præf. *I. D.* per omnia bona & catall' sua, quod sit hic ad prox. Comitatum meum, &c. ut supra. *Alias.*

Also the defendant may be attached by pledges, &c. See plus hic cap. 52-- And the Attachment may be thus.

R. S. Armig' Vic' com. præd. ballivo, &c. salutem. Pone per vadios & salvos plegios *C. D.* quod sit hic ad proxim' Comitatum meum apud *C.* die Jovis, &c. ad respond. *I. S.* de placito Debiti, &c.

Upon a precept of Attachment in the County Court, the Officer must not attach the Def. by his person or body; but by his horse, ox, pot, pan, &c. cap. 32. & 52.

And the goods or chattels whereby the Def. is so attached, the Bailiff shall keep in his own possession until the next County Court; Except the Def. do replevy the same goods so attached by two Pledges distreinable within the County and Jurisdiction of that Court, which pledges shall become sureties that the Def. shall appear at the next Court to answer to the Plt. in his Plaint.

But if the Def. do not by Pledges replevy the said goods so attached, and that the def. maketh default at the next Court (or at the day given him by the Attachment) the Court shall award the goods so attached, to be forfeited (and shall keep the same goods as forfeited, &c.) And besides the Court shall award that the Def. be distreined by other of his goods, to be at the next Court after, to answer, &c. And thereupon an Entry shall be made in the Court Book (or Roll) in manner following.

I. S. op. se versus *C. D.* de placito debiti, &c. Et ipse non venit. Ideo ballivo mandatum fuit quod Attachiat præfatum *C. D.* Qui quidem ballivus retornavit quod attach. unum equum precii v s. & non venit. Ideo ipse in mia. Et præceptum est quod prædictus *C. D.* distringatur quod sit hic ad prox. comit' meum, &c. ad respond' præfato *I. S.* de placito prædicto.

And if the Def. do Replevy the goods attached, by two Pledges (as aforesaid) and then maketh default (sc. appeareth not) the Court shall then award the said Def. as also his Pledges, to be amerced, and shall amerce them; And besides the Court shall award that the Def. be distreined against another day; and then the Entry shall be thus.

I. S. op. se versus *C. D. &c.* Et ipse non venit. Et ballivus retornavit quod Attachiatus est per Pleg. *E. F.* & *G. H.* Ideo in mia. Et mandatum est quod prædictus *C. D.* distringatur quod sit, &c. (ut supra.)

A Distringas.

PRæceptum est ballivo ibid. quod distringat *F. D.* per omnia bona & cattalla sua, quod sit ad prox. Comitat. meum ad respond' *A. B.* de placito debiti, &c. Teste, &c. *Distring'.*

Upon this precept of Distringas, the Bailiff must distrain the Def. by his goods in such manner as he attached him, saving that the Attachment (or goods attached) is replevied by two Pledges, but the Distress shall not be delivered by fewer than four Mainpernors or

Sureties, Or else the Bailiff is to keep the Distress, as he should do the Attachment not replevied. And if the Def. thereupon make default, the Distress not mainprised as aforesaid, The Court shall award the distress to be forfeited, and shall keep the same goods as forfeited, &c. And if the Distress be mainprised, and the Def. maketh default of appearance, the Court shall then award the Def. and his Mainpernors to be amerced. And in both cases the Def. shall be distrained again to be at the next Court after to answer to the Plt. &c.

And the Entry shall be thus.

I. S. op. se versus *C. D.* de placito debiti, &c. Et ipse non venit, & ballivus retornavit quod distrinxit eum per unum bovem precii v s. Et manucapt. per E. *F.* G. *I. K.* & *L. M.* Ideo in mia. Et sicut prius distringatur, &c.

And so process shall be made against the Def. by Distress infinite, until he do appear, &c.

But for every default of appearance that the Def. shall make, he is not amerciable, but distrainable until he come to the Court, whereat when he appeareth he shall find two Pledges to save his default.

Alias distring. & plur' distring.

Alias. PRæc' est ballivo ibid. sicut al' (vel sicut plur') tibi præceptum fuit, quod distringas, &c. ut supra.

Or these may be made more amply, as before.

Note, that the goods or cattel, attached or distreined in the County Court (whether it be upon a Justicies, or otherwise) shall be forfeited upon the default of appearance by the Def. at the day given him by the Proces; *Car anterment serra vaine de fair Attachment ou distress*, si nihil inde evenerit. Vide antea cap. 32. & 35.

Venire facias Jurator'.

Venir' fac. PRæceptum est ballivo ibidem, quod Venire fac' 12 probos & legales homines de ballivo suo, quod sint hic ad prox. cur' ad triand' exit' junct' inter *A. B.* quær' & *C. D.* defend' de placito debiti, vel similia.

And if a full Jury do not appear, then as many as make default, and be not essoined, shall be amerced, and a Decem tales awarded to summon ten more, as followeth, and the same day given to the first Jury.

Decem tales.

A Tales. PRæcept' est ballivo ibid. quod Venire fac. decem tales probos & legales homines de balliva sua, quod sint hic ad prox. cur' cum aliis qui sibi adtunc & ibidem associentur, ad triand. exit. junct. inter *A. B.* quær' & *C. D.* defend. de placito debiti, vel similia.

At which day as many as make default, and be not essoined, shall be amerced, and then an Octo tales shall be awarded, and after that if need be a Sex tales.

And if there appear a full Jury, then both the parties shall have their challenges lawful to the Jurors: And if the Jury find for the Plaintiff, then

then they must give costs of suit and damages against the Def. And in the like manner they shall assess damages, if they find for an advowant, in a replevin, &c.

Le def. estant atteint en le County Court de trespass, Ou si in action de Det, Detinue, Covenant, ou tiels, soit trove encounter le def. donque semble Levari facias *issuera al Officer, de levier les damages & costs, &c.*

At this day it is used, that if the Def. be summoned, and thereupon maketh default, that presently a Levari facias goeth out, &c. but this seems not warrantable.

The form of a Levari fac'.

PRæceptum est ballivo ibid. quod de bonis & cattallis *C. D.* levari fac' 20 s. quos *A.B.* in hac cur' recuperavit versus eum in placito debiti, vel similia, & pro mis. & custagiis suis 12 d. Ita quod denar' illos habeat hic ad prox. cur', ad reddend. præd. *A. B.* Teste, &c. *Levari fac'.*

A. B. miles vicecom' com' &c. Quia *I. S.* ad com' meum (tent' pro com. præd.) recuperavit versus *Will. E.* 31 s. in placito debiti, & 12 d. pro mis. & custagiis unde prædictus *Will.* in eadem cur' convictus est, per judicium cur', Ideo levari facias secundum consuet' præd. 31 s. in dicta curia ad judicat', & dictos 12 d. pro misis, Et denarios illos habeas ad prox. cur', ad reddend. præfato *I. S.* pro dampnis præd. Et habeas ibidem hoc precept' & qualiter, &c. datum 24. die April' an. Regni Dom. Reg. &c. 20. *Alias.*

Uncore le Execution in le County Court est per Distress solement, & mitter in pound tanque soit satisfie; Car ils n'ont power de vender, ou a deliver le Distress al party; Ne nul Execution pur Corps gist la. Finch. 117.

Et accordant al ceo la est un case incerti temporis, *Lou home port Pleint de trespass en le County, & declare as damages de* 40 s. *Et ad Judgment de recover les* 40 s. *Et sur ceo le Vic' face un precept a son baily pur prender les biens le def. & eux reteiner en Pound overt, tanque le def. ad satisfie le plt. pur les* 40 s. Vide Keil. 106.

Auxi si home recover in Court Baron, le Court n'ad power de fair Execution al plt. de biens le def. mes il poet distr. le def. apres Judgment & reteiner le distress en lour mains, tanque le def. ad satisfie le plt. de ceo que est recover en action de trespass. 21 Ass. pl. 72. Na. bre. 165.

Auxi nota que un ne poet aver Capias *in Court Baron, ne Execution la per* Capias ad satisfac', *mes le natural Execution & Proces la, est attachment de biens, &c.* per Martin, 3 H 6. fol. 54. *Et ove ceo accord.* Mr. Finch. fol. 120. *que en County Court nul* Capias *gist, nec en Proces, nec en Execution, mes* tantum *en Courts de Record.* *Cap. ad Satisf. fac'.*

Et uncore si sur le Summons Nihil *soit Retorne, donque un Continual* Capias *issuera quousque, &c. si le suite soit per Justicies.* Finch. 352.

And although that the Sheriff shall hold a plea of debt upon a Justicies, yet the Sheriff cannot thereupon award a Capias ad Satisfac'. See Br. Justicies 1. & hic postea fol.

Neither may the Sheriffs take the body of a man in Execution upon a Justicies. 2 H. 4. Br. Justicies 4. Finch. 117.

P. Wales 44. And yet the Sheriffs of Wales upon every judgment had before them in their County, or Hundred-Courts, in any plaint under 40 s. shall and may (by the Stat. of 34 H. 8.) award a Capias ad Satisfaciend' to arrest the party condemned, or else a Fieri facias at the liberty of the pursuant or plaintiff.

And Mr. Littleton (in his reading upon the stat. of Westm. 2. Lectur. 15.) held, that by force of a Justicies in the County Court, the Sheriff

had power to award a Capias, and also a Capias ad Satisfaciendum; but he made a quære of a Fieri facias. But if the suit in the County be without a Justicies, where the trial is only by *Ley Gager*, there it hath been holden that the plaintiff shall have only a Distringas to have Execution.

Mes pur aver les Viscounts a fair lour Judgments done en lour County Court (ou Bailiffs in lour Hundred Court ou auter Court Baron) safement destre execute, le party poiet aver breif de Executione Judicii, *le quel le Judgment fuit en le County Court per* Justicies, *ou per pleint sans breif. Et ceo breif de* Executione Judicii *serra direct al Vic': Et le breif est un* Justicies, *& in tiel forme.* Rex, &c. Vic. &c. Præcipimus tibi quod Executionem Judicii nuper reddit. in Com' de loquela quæ nuper fuit in eodem Com' inter A. &c. sine dilatione fieri facias. 18 Register. Fitz. 20. b. & Finch. 68. *Et sur ceo le Vic. fera Execution in tiel manner come si le Judgment ad estre done en Court de Record.*

Et si le Vic. ne voile fair Execution sur ceo, un Alias & Pluries *issera, &c. Et sil ne voet fair Execution del Judgment donque Attachment serra direct' as Coroners vers le Viscount.* Fitz. 20. b. Register 18. *& viel breif* 15. And yet by the Stat. of 34 H. cap. 26. the Sheriffs in Wales are enabled upon every Judgment had before them in their Counties or Hundred-Court in every Plaint under 40 s. to award a Capias ad Satisfaciendum against the body, or a Fieri fac. at the plaintiffs choice.

CAP. 112.

Of the Writs of Justicies.

By the Stat. of Westm. 2. cap. 13. it is ordained, that the Sheriffs in their Tornes, and in other places where they have power to enquire of trespassors by the Kings precept, or by Office, &c. which words, in other places, seemeth to be meant of the County Court, and those words, by the Kings Precept, to be intended when the suit is by a Writ of Justicies.

And in this County Court pleas are sometimes holden by the Kings Writ (out of the Chancery) which is called a Justicies, or Vicecountiel Writ, for that it doth give special power to the Sheriff to hold Plea in his County Court; And this Writ is for the dispatch of Justice in special causes, wherewith the Sheriff of his own authority cannot deal in his County Court: and is in effect but a Commission, and giveth this authority to the Sheriff by these words: Præcipimus tibi quod loquelam Audias, &c. Or Præcipimus tibi quod Justicies, &c. (or the like) and endeth in this manner, sc. Ne amplius inde Clamorem audiamus, pro defectu Justiciæ, &c. And then the Writ is not Retornable, but the matter shall be tried and determined in the County Court, before the Sheriff, and that by an Enquest of 12 men, &c. according to the order of the Common Law: And the proceedings therein shall be as in Writs Original of the like nature in the Kings Courts at Westm. &c. Vide Fitz. 85. g. 86. a. & Finch. 117. And the Sheriff is to make the Proces, &c.

And the same Proces shall be in a Justicies, as where the suit is there by Plaint, sc. if it be Account, Det, or the like, the Proces shall be Summons, Attachment, and Distress; if Trespass, Attachment, and

and Distress: But no Capias in any case. Finch. 117. Vide hic Cap. 31. & 112.

Auxi plusors actions dun nature poient estre join en un Justicies, ove several precepts. Finch. 117.

Ceo Justicies ne alter le nature del Court, car les Suitors sont Judge la; Les pleas ne sont de Record, coment que sont per brief; Et brief de faux Judgment gist la, & nemy breif de Errour. Fitz. Admeas.2. Co.6.11. Finch. 117. & hic Cap.

And these writs of Justicies are of two sorts;
Some to have the Plea to be holden before the Sheriff only.
Some to have it holden before the Sheriff, with the Coroners.

In what cases, or for what matters, a *Justicies* may be granted, holden, and sued, before the Sheriff alone.

1. Justicies de Accompt may be sued in the County Court against one as Bailiff, that shall occupy, or take the profits of my Land, &c. Fitz. 117.b Finch. 120.

2. *Admeasurement de Dower*, is Vicountiel (sc. triable in the Sheriffs Court) and shall be sued in the County, &c. and lieth for the Heir, sc. when his Gardian, or himself in his Nonage, hath endowed the Wife of his Ancestor of more than she ought to have in Dower, then the Heir at his full age may sue this Writ against the Wife, and by this she shall be admeasured. Fitz. 148. g. Finch. 118.

And here all the Lands which she hath in Dower within the same County shall be admeasured by the Sheriff, and the surplusage taken from her, sc. so much of the Land only shall be taken from her, as exceeds the third part which she is to have in Dower, but she shall have no Land assigned to her in Dower de Novo. Fitz. 148. f. Finch. 118.

Note, if the wife cometh and saith that she is ready to be admeasured, the Plt. shall recover no damage. Regist.

3. *Admeasurement de Pasture*, is also Vicountiel, and may be sued before the Sheriff in his County; and being directed to him, shall not be Retornable. Fitz. 125. c. And lieth for a commoner, sc. when another commoner puts on more beasts or cattel upon the common than he ought, be it a common Appendant, or Appurtenant, so it be for a certain number: And here all the commoners shall be admeasured, as well those which have not surcharged, as those which have, and also the Plt. himself (but the Lord shall not be admeasured, Br. view.5.) Finch. 118.

Mes ceo breif ne gist, neque per le Seignior vers ses tenants queux surcharge, neque per le tenant vers son Seignior qui discharge. Fitz. 125. d.

Upon this writ directed to the Sheriff, he ought to hold Plea thereof, otherwise an Alias, and Pluries, &c. shall go out, whereupon if he sheweth not cause, an Attachment shall go out against him. Fitz. 125 e.

And upon this Writ of Admeasurement, the Plt. is to enter his Plaint in the County before the Sheriff, as he must upon a Replevin sued by Writ before the Sheriff. And thereupon the Sheriff shall make his precept to his Bailiff to warn the Defendant to appear, and if he cometh, and cannot shew cause to the contrary, then the Sheriff shall make Admeasurement: But if the Defendant shall shew cause to the Sheriff why Admeasurement should not be made, then the Sheriff shall make no Admeasurement upon this Writ, but the Plea shall be removed into the common Bank, &c. Vide Fitz. 125. g.

A Writ of Annuity may also be sued in the County Court by a Justicies, vide Fitz. 152. b.

Also it appeareth by the Register of Writs, fol. 167. that a man may

may sue a Writ of Covenant by a Justicies in the County Court. Fitz. 145. e.

Et ceo semble destre in le personalty sc. *lou home Covenant ove auter per fait de fair a luy un meason, ou auter chose quecunque; Ou de luy servir, &c. Et ne fait ceo accordant a son Covenant.*

Et potest breve hoc removare per Pone, & fiat ut in Replegiare: Sed si placitum Conventionis sit sine brevi in Comitatu, tunc fiat Recordare. Register 167.

Assise de Nusance. Vide hic *Nusans.*

Curia claudenda. Justicies de curia claudenda, sc. where a man ought to inclose his ground against his Neighbours ground, and will not. Fitz. 127. g.

Vide my other Book hic six lines, & scribe hic.

De customs & services. Justicies *de customs & services*, sc. where the Tenant withholdeth his rents or services from his Lord. Fitz. 151. b. c.

Det. Justicies *de Debt*, and this may be either for a debt of money, or of other goods; and this may be removed out of the County into the court of Common Pleas by a Pone, either by the Plaintiff or Defendant. Fitz. 119. g. h.

Detinue. Justicies *de Detinue*, and this plea may be also removed by a Pone, out of the County, at the suit of the Plaintiff or Defendant: but the Defendant must shew cause in his Pone, and so needs not the Plaintiff. Fitz. 138. b.

Dower. Justicies *de Dower*, unde nihil habet: See the form of the Writ, Fitz. 148. b. d.

Droit. Justicies *de Droit de Gard*; See the form of the Writ, Fitz. 139. f.

Nota que nul brief de garde poet estre plede in County, forsque brief de Droit de garde. Register 160. *Mes per le viel*, Na. br. fol. 97. *Touts breifs de gard forsque breif de Ejectment de gard poient estre pledes en County.*

Vide plus of these particular Writs following in my other Book.

Justicies *in breif de droit patent.* 39 H. 6. Br Justic. 6.

Justicies de Homine Replegiando. Et ceo gist pur cestuy qui est a tort imprison, ou in prison detein; Come sil est bailable, Ou si soit claim come villen, ou come in Gard, lou in verity il est frank & hors de Gard. Fitz. 66. c. & 67. Finch. 119.

Mesne. Justicies *de Mesne.* See the form of the writ, Fitz. 35. n.

Breif de mesne gist quant le tenant est distrein ou fear d'estre distrein per le Seignior peramount.

Justicies de Nativo Habendo, & ceo gist per Seignior, quant villen in que il ad inheritance, se ensua de luy. Fitz. 77. a. Finch. 118. vide *plus* hic cap. 67.

Nusans. Justicies *de Nusans.* Fitz. 184. b. sc. *quant Molin ou auter petite Nusance est levy al Nusance d'ascun.* Finch. 117. N. br. 110.

Now the writ of Assise of Nusans, which are Vicontiels (sc. which belong to the Sheriff, or which are triable in the County or Sheriffs Court) appears by these verses following:

rica ca ● gultum ges lendinum
Fab, sur, porta, domus, vir, gur, mo, murus, ovile,
Et pons, tradantur hæc vicecomitibus,

Id est debent determinari coram vicecomitibus in Comitatu ubi hujusmodi Nocumenta acciderint.

Et ceux breifs sont appelles petits breifs. N. br. 110, 111.

Plegiis acquietand'. Justicies de Plegiis acquietandis. See the form of the writ, Fitz. 137. d. f.

Quarentine. Justicies de Quarentine. Fitz. 161. e.

Note that upon this writ the Sheriff shall presently after the receipt of the writ, award proces against the party, to cause him to come, &c. and to answer, &c. and shall not tarry till his County Court, but

but immediately shall procéed thereupon as Justices shall do upon a Commission of Oyer and Terminer, &c. Fitz. 162. a.

Justicies de Quod permittat. Sée the form of the writ, Fitz. 123. g. *& le viel* Na. br. 69. *Quod permittat.*

Justicies de Rationabil. divisis. Fitz. 128. p. q. *Rationab. divisis.*

Et ceo breif gist pur Seigniour sur quel terr. ou wast, un auter Seigniour que ad Seignorie adjoin en auter ville, ad per petit encroache deins temps de memory tanque ore, vers le Seigniour qui issint encroache. Vide *le viel* Na. br. 73. & 74. & Finch. 119.

In this the Plaintiff shall make his plaint before the Sheriff in the nature of a count, and thereupon the Sheriff shall make his precept to warn the Defendant, &c. and when he cometh the Plaintiff shall make his count, and the Defendant shall answer thereunto in the County, and if the Defendant cannot deny it, &c. then the Sheriff shall make the partition and division of the Lands betwéen them by meets and bounds: but if the Defendant will plead, and joyn the issue, *sur le mere droit, & lui mitter in grand assise*, then the Plaintiff ought to remove this, &c. or the Defendant may remove it upon shewing cause, &c. Fitz. 128.

Justicies de Replevin &c. *pur biens & Chattels distrein.* Fitz. 68. d. *Mes le Vic. devant deliverance, prender pledges de* Returno habendo, *cibien come de prosequendo, per stat.* Westm. 2. Cap. 2. Finch. 119.

Les def. recovera costs & damages si le matter soit trove pur eux, ou le Plts soit Nonsue, ou auterment barr. Ibid.

Sur Replevin sue icy, si les biens sont esloin, issint que al suit del tenant ne poient estre restore (come esteant chase al Fort ou Castle, Ou hors del County, &c. per que le Vic. sur Pluries retorn que sont esloigne, Proces de withernam issera, &c. Fitz. 73. Finch. 119.

Upon the Pluries not served, the power of the Sheriff is determined, 2 H. 7. fol. 6. Finch. 120.

So if the Defendant claimeth property, the power of the Sheriff is determined. See hic cap. 114. But if the Defendant claimeth no property, then the Sheriff shall deliver them, &c.

Justicies de secta ad molendinum. See the form of the writ, Fitz. 123. a. *Secta ad molend.*

Fitz. 86. a. g. Justicies de Trespass: Note that for every manner of trespass done, a man may have this writ directed to the Sheriff to determine the matter before him in his County Court; and by this writ the Sheriff may hear and determine of the trespass by an Enquest according to the order of the Common Law; and the Plaintiff may count upon this writ to the damages of xx l. or more. Fitz. 85. 86, 87. *Trespass.*

But the form of this writ of Trespass which is Vicountiel, shall not say, or suppose the Trespass to be vi, & armis.

And here note, that these writs of Justicies do not only lie of Trespasses, and other personal things, (as of Accompt, Annuity, Covenant, Debt, &c.) but also of things and in writs which are Real, (as of Customs and Services, Dower, &c.) as appeareth here before.

Also although the Freehold shall come in question, where the sute is by a Justicies in the County Court, yet the Court shall not surcease, but may determine the issue, 14 H. 8. 15. b. Br. Jurisd. 98. Finch. 320. &c. Vide.

But if the Writ or Pleint shall be, vi & armis vulneravit, or contra pacem, the Sheriff cannot determine them. Register 92.

Note that the words of a writ de Justicies, are always after this sort; Rex Vic. Cantabr. salutem. Præcipimus tibi quod Justicies A quod, &c. Co. 6. 11.

Upon these former writs of Justicies, the Sheriff in his County Court

Court shall hear and determine the matters by an Enquest of xij men, according to the Order of the Common Law.

And the Plt. may Count upon these writs to the damage of xx l. or more, yea, to any sum whatsoever. Finch. 318.

But note that the Justicies is no Original, but only a Commission to the Sheriff, to give him power to hold Plee above xl s. in his County Court. Br. Justicies 1. 3. 3 H. 6. 54. 7 E. 4.

And in a Justicies, although the Writ be directed to the Sheriff, and be quod Justicies T. &c. yet the Sheriff is not Judge therein, but the Suters are Judges; and a Writ of false Judgment lieth upon their erronious Judgment, &c. See Co. 4. 32. & 6. fol. 11. 7 H. 6. Br. Just. 3.

1000 *Marks.* A Justicies cometh to the Sheriff to hold plee upon an obligation of 1000 marks, the Sheriff by virtue of the said Writ may hold plee thereof; but the Sheriff cannot thereupon award a Capias, nor a Capias ad satisfaciendum. 3 E. 4. Br. Just. 1.

Capias n: gist.

And so the Sheriff cannot take the body of a man upon a Justicies, nor upon the Writ de Nativo habendo, for although the Writ be Habere facias talem nativum, & fugitivum suum, &c. yet this is to no other intent, but only to give the Sheriff power to hold plee, &c. And the proces in a Writ de Nativo habendo, is, and always hath been summons, attachment, and distress. 2 H. 4. Br. Just. 4. Faux Im 30.

So that this Writ of Justicies is but in the nature of a Distringas, to distrain a man by his goods, to answer there to the plaintiffs action; for his body cannot be touched with it by Law, nor his Lands.

Vic' seer luy m sme. Also upon a Justicies directed to the Sheriff to hold plee, the Sheriff cannot make his precept or warrant to the Bailiff of a Franchise, neither may he suffer him to have conusance thereof, neither may any other hold plee by force of a Justicies directed to the Sheriff, but only the Sheriff himself, per Curiam. 34 H. 6. Br. Just. 2. Tit. Bar. 161.

A Justicies came to the Sheriff to hold plea of 1000 l. and he held plea thereof in his County, before his Under-sheriff, and that was assigned for error, in a Writ of false Judgment. 21 H. 6. Br. Officer 38. & Deputy 19.

What Plees shall be holden by Writ of Justicies *in the County Court, before the Sheriff, with the Coroners.*

1. The Writ de Odio & Atia, for the replevying or bailing of persons indited of murder. But this is out of use. Vide Finch. 120.

2. The Writ de recaptione may also be sued in the County Court before the Sheriff and the Coroners. Fitz. 72. d. h. 73. d.

Et ceo brief gist quant celuy qui ad biens distrein devant pur Rent ou services, & ils sont distrein arere pur mesme cause, pendant le plea en le County Court. Finch. 121. Vide plus ibidem & Fitz. 71.

Si home soit convict devant le Vic. en breif de Recaptione, *il serra amerce, & render damages al party.* Finch. 73. d.

Note, where any plea is holden in the County Court by a Justicies. yet the same may be removed into the Court of Common Pleas.

Proces. Attachment. *Nota, que le Proces in* Justicies *est attachment, a quel jour sil appiert, ou soit Essoin, le chose per que est attach ne serra forfeit, mes sil ne appiert, ne est Essoin, serra forfeit.* 21 E. 4. Br. Attach. 11.

Plea remove. Note, that whensoever an action (or what action soever) is brought or sued, in the County Court before the Sheriff, by a Justicies, or otherwise, be it by Pleint, or Writ, the same sute or plee may afterwards be removed out of the County Court, into the Kings Bench, or

Common

Common place for them to hold plea thereof by the Kings Writ directed to the Sheriff, either at the suit of the plaintiff or defendant.

Fitz. 69, 70. a. Libr. Intr. tit. Justicies. And this the plaintiff may do in most cases without any cause shewed by him in his Writ: But the defendant cannot remove the plea, without shewing cause in his Writ; As if the Defendant will shew that he before whom the Writ depends, maintains or favours the plaintiff, &c. Fitz. 70. a. & 119. i. Vide Plo. 74. & Finch. 122. Regist. 84.

Ou le def. poet plead un forrein plee, que ne poit estre trie in le County Court, &c. Fitz. 119. i. *Sicome lou pleint est affirme en le County de* xx s. *ou, &c. le def. poet pleade un Release en forrein County ou Ville, Ou auter chose que ne poet estre trie in le County Court, Et sur ceo le def. poet remover le plea.* Regula.

Nota que si le Replevin soit sue in le County, per

Fitz. 70. { *Brief* / *Plaint sans brief* } *doit estre remove, per* { *Pone.* / *Recordare.* }

Finch. 122. *Nota que Recordare, Pone, ou tiel, sont a nul auter intent forsque a remover chose ou Suite en Courts le Roy, Et sont en nature de* Certiorare, *Et sur le remover, le* Recordare, *ou* Pone *est determine; Car le plea ne serra tenus sur eux, mes sur le pleint que est remove, & les primer Pledges estoier.* Finch. 122.

Le Pone, lou est al suit de plt. en Replevin, command que le Vic. Summon le def. que il soit in banco a responder, &c. 12 E. 4. 11.

Mes lou est al suit del def. est forsque un dicas querenti, *le quel n'est que prefixion del jour al parties.* Finch. 122.

Un Certiorari, *auxi poet estre direct' al ascun Court de Record, d'estre certifie d'ascun Record que est devant eux: Et per tiel breif de* Certiorari, *le Record mesme poet estre Remove, &c.* Vide mon Country Justic. cap. 134.

Si pleint soit remove hors del County per Recordare, &c. *& le breif de* Recordare *port date avant que le pleint fuit enter in le County, uncore le record est bien remove, pur ceo que ambideux courts sont courts le Roy.* Fitz. 71. d.

Si le pleint soit discontinue in le County, uncore le pl. ou def. poit remover ceo pleint in common bank ou bank le Roy, per Recordare, &c. *& serra bone, & il poit counter sur ceo, &c. & le Court tener plea sur ceo pleint: car si le pleint soit continue in le County, & issue join sur ceo, uncore riens serra remove forsque le pleint solement, & in Common Bank le pl. counter de novel, &c.*

Fitz. 71. a. *Si pleint soit remove hors del County* in banco, *ne serra apres remand, quia ambideux sont Courts del Roy; & le cause de remover hors del County nest traversable.* Vide Fitz. Cause de remover plee 17. 13 E. 3.

Si le Vic. remove le plee hors d'ascun Court per Pone, al suit le pl. ou def. & puis les Bailiffs, ou officers del Court proceed sur le pleint, & done judgment, & font exec', &c. donque le def. ou cestuy vers que judgment ou exec' est fait, avera breif d'attachment vers le Bailiffs, ou ceux que issint proceed al judgment, &c. de respond' al Roy cibien del contempt, come al party des damages, &c. Fitz. 119. k.

Nota que hors de Court Baron, ou auters tiels Courts del Signeors, Plees poient estre remove per un Accedas ad Curiam: *Sed si sont les Courts le Roy, donques si sont in Courts que ne sont de Record, come le County Court, la le plee serra remove per* Recordare, *ou* Pone; *Mes in tiels Courts le Roy, que sont de Record, le plee serra remove per* Certiorare.

Br. Court Bar. 12. *In action de trespass port in le County Court, si le def. plead son franktenement, ou auter tiel plee, le Court ne doit proceeder ouster, mes doiet ceaser de tener plee; & sils proceed, brief de faux judgment voet giser.* Son franktenement.

En Det port in le County pur Rent sur un Lease a terme des ans, le def.

plede que le plt. luy infeoff de cel ter, ceo ouster le Court del jurisdiction.

Issint si le def. plede que le ter. est Auncien Demesne.

Si ascun chose que concerne Franktenement vient en question en un pleint de trespass, ou tiel (en le County Court,) le Court ne proceeder; come lou le def. avow pur damage fesant, & plt. justifie pur Common de pasture. Mes suit (in le County Court) per breif proceeder; Et pur ceo en tiel case sur pleint in le County Court, le party n'ad remedy forsque breif de trespass Viscountiel, & per ceo le Vic. poet determine l'issue coment que franktenement vient in debate. Finch. 117. 120.

In trespass des arbres coupes, de def. claim property in le soil; si le plee soit sans breif ceo Court n'ad power pur determine le Realty. N. brc. 48.

Auxi si le def. claim le pl. destre son villein, le Court ceaser de tener plee, & fils procede breif de faux Judgment gist. Br. Court Baron 21. Ibid.

Sur faux Judgment done en ceo Court, le party greive avera brief de faux Judgment a remover ceo, que voile que le Vic. recorder ceo, & d'aver in Banco. Finch. 117.

Prohibition. *Si home sue auter en le County Court, pur charters concernant inheritance, ou franktenement, prohibition gist.* Fitz. 47. b.

Si home implead auter in le County Court, (sans Justicies*) des dets, ou chattels, que amount a le summe de* 40 s. *le party avera prohibition vers le Vic. commandant luy que il ne tener plee, & que il dira al party pl. que il suer in le Common Bank: Ou le party poet aver* Supersedeas. Fitz. 239. h. Fitz. 46. a.

Si home doit al auter sinque marks, & le creditor sua several pleints de ceo in le County Court vers le dettor, Prohibition *ou* Supersedeas *gist.* Fitz. 46. a. Finch. 116.

Issint est si home voil suer in le County Court, breif de Covenant, ou de Trespass, ad damage de 40 s. *ou pluis, le party avera* Prohibition *ou* Supersedeas. Fitz. 239. h. n. brc. 63. Ibidem.

Issint semble si en le County le plt. demand 39 s. *& declare al damages de* 16 d. *le Court serra ouste de jurisdiction.*

Issint si le executors sue in le County Court, pur det de six marks, per divers pleints, &c. lou le det est sur un contract, ou sur un obligation, ore le defendant poet monstre cel, & pleader al jurisdiction del Court, ou il poet aver breif de Prohibition *ou* Supersedeas, &c. *& sil aver Judgment in ascun des pleints sue del parcel de ceo det, uncore in le prohibition il poet luy inhibiter de proceder in ceux pleints, que sont pendants, & que il cessa del execution del judgment del residue.* Fitz. 46. c. & 239. h.

Apres judgment.

Auxy si home sue in le County un pleint de 20 l. *& ad judgment de recover ceo in mesme le Court, uncore le defendant poit suer un breif de* Prohibition *(ou* Supersedeas*) commandant le Vic' & les suitors, que ils ne executer cel Judgment, coment que ils ad admit le jurisdiction avant.* Ibidem.

Apres exec'. *Issint apres Judgment done, & execution agard in le County Court, (de det de sum de* 40 s. &c. *ou des damages in trespass amountant a tiel sum, ou pluis) le def. poet aver breif de prohibit' al Vic' que il surcesser de faire execution, Et sil ad distrein le party de fair satisfaction, &c. que donque il releaser cest distress, &c. & que il revoke ceo que il ad fait in ceo part.* Fitz. 46. a

Nota si le Vic' &c. ne surcease, sur tiel prohibition deliver a luy, donque Alias, Pluries, & Attachment, giser vers le Vic', &c.

Nota que est rule in le Register, Quod si placita de cattallis, vel debitis, quæ summam quadraginta solidor' attingunt vel eam excedunt in comitatu (vel in alia curia) sine breve placitentur (quod absit) non fiat inde breve de falso judicio, nec recordent', nec breve de Execut' Judicii; exceptis cur' civitatis, & aliis, quæ secundum consuetudinum, hujusmodi jurisdict' habeut. Fitz. 46, 47.

Auxi

Fitz. 86. g. *Auxi nota, que pur chesc' manner de trespass fait, home poet eslier de aver breif direct al Vic' a determin' cest matter devant luy in son County; Ou suer breif direct al Vic. retornable in Bank le Roy, ou Common Bank.* *Trespass.*

Fitz. 47. a. Br. Justic' 5. *Et uncore le Vic' ne poet tener plee in son County Court de trespass, ou auter action, lou l'offence serra lay destre* vi & armis, *& sil fait, le def. poet aver* Supersedeas, *ou prohibition al Vic' command' luy de surcesser, &c.* Finch. 116. & Fitz. 239. d.

Nota per Littleton, *que home poit aver* Justicies *de trespass sans* vi & armis, *& la le def. ne ferra fine pur le trespass.* 8 E. 4. 15. Br. Justic' 5. vide Fitz. 85. g. *que le brief de trespass que est Vicountiel, ne dira* quare vi & armis, &c. Et vide *le form del breif* ibidem.

Sur faux Judgment done sur pleint in County ou Hundred Court, & sur breif de Justicies *in le Counte, brief de faux Judgment gist, & nemy breif de error, coment que le Judgment est de det, ou trespass ouster* 40 s. Fitz. 17. 18. & 19.

Nota, pleint ne poet estre fait in County Court, si non in plein County, & sedente curia, & non extra curiam; *car les suitors sont Judges la, & le Vic. est forsque minister, & le proces serra agard per les suitors.* 21 E. 4. Br. Pleint. 21. *Plaints.*

Uncore Vic' poit faire replevin hors del Court, aliter serra mischief de terger pur mes beasts tanque le County, Et ceo ad estre use de temps dont memory, &c. per tout Angliterre, per Pigot & Brian ibid. & 9 E. 4. fol. 48.

Mes Whithernam ne poet estre award ou grant, nisi in plein County, Pigot ibid.

Plees tenus devant le Vic' in son County, ne sont de Record, soit per breif de Justicies, *ou auterment.* Br. Recog. 18.

Touts Pleints enter devant le Vic', &c. doit estre per Escript, car home ne serra mise a responder a nul chose, sil ne soit matter en Escript' per Littleton 9. c. 4. 48.

La manner de quel entrea. Vide hic cap. 114.

Auxi nota que tiel entries, pleints; responsiones, barres, & issues, sont destre fait, & mise eins, al County Courts, come sont use in le Hundred Court, ou Court Baron, Mutatis Mutandis.

Auxi touts trials (per pleint) devant le Vic' in son County Court, serra solement per gager del Ley (sc. *per le serement del def.*) *uncore per Prescription poet estre per Jury,* sc. *per le verdit de xij homes, que est encounter le common course.* Finch. 117.

Nota, que Ley gager doit semper estre fait devant le Judge. Co.L. 168. b.

Al Common Ley sur Gager del Ley in ascun Court de Record, le party doit aver port Fideles testes. Ibidem.

Mes in Courts que ne suer' de Record le def. poet aver Gage sa Ley sans fideles testes, *tanque le stat.* de Mag. Charta, cap. 28. Co. L. 168.

Et in Det vers Enfant deins age, cest suffic. cause de remover le Plea, pur ceo que il ne poet Gager son Ley.

Mes ou le suit est per Justicies, *la le Trial serra per un Enquest de xij homes.* Stat. Westm. 2. cap. 13. & Fitz. 86.

Auxi le trial icy (sur pleint) poet estre per Examination, come si in plee de dett, le def. demand quel le plt. ad de prover le det, le plt. poet produce ses testmoignes al Contract, que serra jure, & Examin, & sils done Evidence, pur le plt. il recovera son det & damages.

Auxi si le def. Confess le action del plt. en tiel case le plt. recovera son demand, &c.

Concernant Gager del Ley, le Stat. de Mag. Charta cap. 28. *voet* quod Nullus ballivus de cætero ponat aliquem ad legem manifestum, nec ad

juramentum simplici loquela sua, sine testibus fidelibus ad hoc inductis, sc. *nul mitter ascun home a sa Lay (in ascun action devant Vic. Baily, Escheater ou Coroner) per son simple parol sans Pledges a ceo prises: Nec ad* Juramentum, sc. *a sa Ley fair d'ascun chose, sans xj maines, & il mesme le xij maine. Et si ascun fait encounter ceo stat. Prohibition gist, ou breif de faux Judgment.*

Quant ascun voill gager sa Ley, il doit vener al Commencement del Court & doit proffer de gage sa ley, &c. Le gager del ley est en tiel manner sc. *(in action de Det port sur simple contract, Detinue, & Tiels) le defendants doit jurer sur un liever, que il ne doit al plt. l'argent que il demand ne ascun part del ceo,* or that he not detaineth the goods, &c. *Et il covient aver ove luy xj maines* (ut supra, *ou tiel number que le Court agarder) de jurer ove luy,* sc. *que ils intend, ou pense en lour Consciences, que il disoit & jure verament, & sur ceo il serra discharge.* Vide Co. 9. 31. *que le def. fera sa ley de Duodena manu,* sc. *xj ouster luy mesme. Et sic ley gager countervault un Jury.*

Mes si action soit commence sur ascun especialty, ou sur matter de Record, ou sur chose touche terr', &c. la le def. ne aider luy mesme per gager del ley, mes de mitter in Trial per verdict de xij homes.

Auxi in plea de trespass, le def. dira que il nest culp. Et sur ceo il peut offer de gager sa ley; si ne soit in trespass Contra pacem.

Et in ceux cases ou le def. gage sa ley, apres son issue per ley gager prise, le def. avera jour usque al prochein Court, & de trover Pledges de gage sa ley, ut supra.

*Mes si le defendants fail de sa ley gager (*sc. *sil fait default al jour appoint per le Court; ou si ses testimoines refuse a deposer, &c. Ou si touts testimoines ne veigne eins, &c.) en chescun tiel case le plt. recovera touts ses demands, ovesque ses damages, accordant a son Declaration, sans ascun taxation del Court.*

Ley gager poet estre in divers auters Cases, come in action de Covenant, Detinue, Replevin, &c. Mes cestuy que voet gage sa ley, fuit il bien advise que il traversa le point sur que l'action est mantein; come le duty en Case de Det; le deteiner en Case de Detinue; le breach del Covenant en breif de Covenant; & le prisel del avers en Case de Replevin, &c.

If any man will enter any plaints in the County Court, they must be entred in the full Court before the Sheriff, &c. after this manner.

A. B. Queritur versus *C. D.* de placito debiti (vel de placito detention' vel de placito caption' & injuste detention' averior' suorum, vel de placito Convent. fract. vel de placito transgress. vel similia, as the case shall be.)

Pleadings,

Pleadings, &c. in Debt.

- *In Debt*
  - *Declaratio*
    - *Sur accompt.*
    - *Sur obligation, ou auter specialty.*
    - *Sur retainer pur wages.*
    - *Sur mutuatus.*
    - *Sur bailment per auters mains.*
    - *Per executors, & vers executors.*
    - *Per administrators, & vers admin'.*
  - *Barr'*
    - *Per paiment.*
    - *Prist a payer.*
    - *Per acquittance.*
    - *Per release.*
    - *Obligation fait pur le det.*
    - *Per concord.*
    - *Per arbitrement, que il ad performe.*
    - *Per nul arbitrement fait devant tiel jour.*
    - *Non est factum.*
    - *Per minus ou dures.*
    - *vel*
      - *Rien luy doit, & issue sur ceo.*
      - *Rien luy doit per Ley Gager.*
      - *Deins age.*
      - *Que el fuit covert al temps.*
      - *Que le plaintiff ad baron.*
      - *Ne unques admin'.*
      - *Plene admin'.*
      - *Confession.*
      - *Imparlans.*
      - *Non sum informatus.*
      - *Nihil dicit.*
  - *Replication.*
  - *Rejoinder.*
  - *Demurrer.*

- *In Detinue*
  - *Declaratio.*
  - *Barr'*
    - *Per non detinet.*
    - *Non detinet per ley gager.*
    - *Per done.*
    - *Per release.*
    - *Port in Court prist a paier.*
    - *Que le plaintiff deliver ceo in gage al defendant pur* 20 l. &c. *& que n'ad pay le* 20 l.
    - *Que fuit bail per le plaintiff, & A.*

- *In Action sur le case.*
  - *Declaratio*
    - *Sur assumpsit.*
    - *Pur defamation.*
    - *Sur bailment.*
    - *Sur detinue.*
    - *Sur garranter de chose vend.*
    - *Pur rumper del stagne, &c.*
  - *Barr'*
    - *Non assumpsit modo, &c.*
    - *Non culp.*
    - *Per concord perform.*
    - *Non warrantizavit.*

In

In Replevin
- Avowrie
  - Pur damage fesant.
  - Pur rent.
  - Pur amercement in Leet ou Hundred.
  - De injuria sua propria, vel ut serviens.
- Barr'
  - Que les avers enter pur default de encloser.
  - Pur common.
  - Rien arere.

In trespass
- Declaratio
  - Pur meason, ou close debruse.
  - De chival, money, ou biens prise.
  - De ses barbits Chases per chiens.
  - De assault & battery.
  - De assault & imprisonment.
  - De battery de son servant, ou chival.
- Barr'
  - Non culp.
  - Pur prisel pur amercement in Leet, &c.
  - De son assault demesne.
  - Que le pl' enter in close de def. & enfreint ses hedges (ou prent tiels biens,) per que le defendant luy require a departer, &c. & mit ses mains moliter sur luy, de luy faire departer, que est mesme le trespass.
  - Pur arbitrement, & performance del ceo.

For the better and more ample form of all these, and the like pleadings, &c. See the Book of Entries.

The Sheriff and his Officers and Clerks, for the entring of Plaints, Proces, Pleas, and Judgments in their County Courts, shall take the ordinary and usual Fees, and if they take any more, it is extortion.

CAP. 113.

Replevin sur pleint. The Sheriff upon complaint made to him (that the beasts of any man be taken and wrongfully withholden) may deliver them without any let or gainsaying of him that took the beasts, if they were taken out of Liberties; And if the beasts were taken within any Liberty, and the Bailiff of the Liberty will not deliver them (upon the Sheriffs precept) Then the Sheriff for default of those Bailiffs shall cause them to be delivered: and this is by force of the Statute 52 H. 3. Whereas before by the Common Law, when any mans Cattel were taken and withholden, the Sheriff could not make Replevy or deliverance of the Cattel, or the goods so taken and withholden, without the Kings Writ. Dyer 246. Fitz. Retorn. 17. *52 H. 3. c. 21. F. Repl. 1.*

Issint si un Seignior ust destrein son tenant, pur ses services or Rent *arere, le tenant poiet aver un Replevin al Common Ley; Mes ceo il ne poiet aver ou suer, sinon per breif, tanque ceo stat. de* Marlebr. *fait.* An. 52 H. 3. c. 21. *Et Ore per cel stat. le tenant poet maintenant vener al. Vic. ou le prisel est fait, Et le Vic. fera la deliverance sur son Plaint, sans* br. Lectur.

Et sic Nota *a ceo jour, que le tenant, ou auter person, queux avers sont prise & injuste detein, poet eslier de suer Replevin per brief, Ou per Pleint & ceo per force del ceo stat. de* Marlebr. *que Ordein, quod post querimoniam, &c. Vic.* deliberare potest, &c. ibid.

But

But the Sheriff must first take Pledges of the Plt. de Prosequendo, & de Returno habendo (see hic postea.) Also the Sheriff must take heed that he delivereth not one mans Cattel for anothers.

3 E. 1. c. 17. P. Distr. 4. Co. 5. 93. By another Statute made Anno 3 E. 1. It is provided, that if any take the beasts of another man, and drive them into a Castle or Fortress, and there hold them (being solemnly demanded by the Sheriff, or Bailiff) against gages and pledges, so that the Sheriff or Bailiff cannot make deliverance of them to the owner, There the Sheriff, or Bailiff taking with them the power of the County or Bailiwick, shall beat down the Castle: And the Plaintiff shall recover double damages for all the loss he hath received by his Cattel, hindrance of his gainage, or in other manner (after the first demand of the Cattel made by the Sheriff, or Bailiff) against him that took the Cattel, or against his Lord, if he be not able to answer them: Westm. 1. 3 E. 1. 17.

But the Sheriff may not break the Close to make a Replevy, where there is a Gate, except the Gate be locked, &c. 20 H. 6. 30.

In detenant distresses la fuer' divers mischiefs al Common Ley.

1. *Cestuy que ad distrein voet esloiner le distress hors del County, mes pur remedier ceo, le stat. de* Marlebr. cap. 4. *fuit fait.*

2. *Si cestuy que distrein voile que le Owner n'avera delivery de ses beasts, adonque ou il voile Encloser eux in Castle, &c. Ou chaser eux en Franchise, issint que le Vic. ne poet fair deliverance, coment que il voet; pur remedier quel tort, il est ore purview per ceo stat. de* Westm. 1. cap. 17. *que si sont en Castle ou fort, le Vic. poet. abater ceo, & fair delvery. Et si sont en Franchise, que donque le Vic. poet Enter le Franchise de fair replevin* (sc. *sur desault del Bailiff de Franchise*) vide hic postea.

Issint si cestuy que distrein voet mitter les beasts en ascun auter Lieu, en le quel delivery ne poet estre fait, Come sil mett eux en un Parke, ou en un meason, ou en un Close, &c.

Mes sil avoit mise ou Enchase les beasts, &c. En un Rectory, la le Vic. ne puissoit fair deliverance del eux. Fitz. 68. g. *Car nient plus que avers poet estre distrein la, nient plus poet ils estre deliver la; per que pur avoider touts inconveniences, le stat. fuit* 1 & 2 Ph. & M. cap. 12. *Ordein que les avers prise ne serra mise en auter Lieu, que en Pound overt, le quel est expound en nostre livers, d'estre tiel Lieu a que le owner poet vener a doner son Cattel sustenance, Et a que le Vic. poet vener pur fair deliverance sans danger d'auter.* 5 H. 7. fol. 9. 11 H. 7. 14. & 21 H. 7. 41.

Auxi per le dit stat. de Westm. 1. *si le Cattel sont mise in Castle, &c. le Vic. poet prender Posse Comitatus, de fair deliverance.*

Issint si les avers sont mise en un Parke, Ou en un meason, &c. Ou si ascun auter disturbance soit fait al Vic. (ou al auter Bailiff le Roy, &c.) ils poent prender Posse Comitatus pur fair deliverance.

Mes le Vic. ou auter Officer, doit primes vener al Lieu, & la demand le view del Cattel, & de admonish l'auter de fair deliverance; Et sil ne poet aver le view, Ou sil soit disturbe, ou deny de fair delivery, sont ascun present ou nemy fils n'ont d'estre garny, le Vic. maintenant abater le Castle, &c. & fera deliverance del Cattel. Vide *le dit Stat.* & Briton, fol. 54. *& viel* N. br. 44.

Mr. Bracton, libro 3. cap. 37. writing hereof saith thus: Officium vicecom' est, si quis Conqueratur de injusta Captione, vel injusta Detentione contra vadium & plegium, Quod cum breve Domini Regis supervenerit & receperit, &c. Vel etiam ad Querelam alicujus sine brevi, (accepta ab eo prius securitate de prosequendo) in propria persona sua, si ad hoc intendere possit, accedat Vicecom' ad locum ubi averia detenta

detenta sunt, ut dicitur, vel si ipse vicecomes non possit, mittat servientem suum, Et statim cum venerit, petat visum de averiis illius ubicunq; inclusa fuerint. Et si sit aliquis Contradictor vel qui velit Contradicere quod inde visum habere non poterit, vel propter hoc in eum manus violentas injecerit, Statim levet hutesium & clamorem, Et capiat delinquentes, & in Gaolam projiciat, quousque Dominus Rex inde præceperit voluntatem suam, Et averia capta deliberet si inveniantur. Si autem inveniri non possunt, eo quod alibi fugata sunt, vel extra com' in fraudem, Et Captor terram habuerit in com' & Catalla, capiat serviens Domini Regis de averiis illius in duplum, & illa detineat donec averia sic abducta reducantur. And a little after he saith, Cum autem vicecomes vel serviens Regis visum habuerit de averiis Captis sine impedimento & contradictione, statim faciat ea deliberari querenti, Et statim det utriq; eorum diem ad proximum Comitatum, ut illi qui cepit averia, quorum captio dedici non poterit contra Recordum Vic. vel servientis, sive justa fuerit sive injusta, ostendet rationem quare illa juste ceperit, Et tunc ille qui petit dicat si possit quod injuste: Ad quem comitatum nullum de jure competeret Captori Essonium, cum injusta Captio & detentio contra vadium & plegium, dici poterit quædam roberia contra pacem Domini Regis, &c.

So that by this former statute of Westm. 1. cap. 17. The Sheriff may break open a mans Castle or House, to make a Replevin, when the Cattel or goods of another, which he hath distrained, be by him conveyed into his house, or Castle, to prevent the owner to have Replevin of his goods: And yet here before the Sheriff (or his Officers) shall break such house, or Castle, they ought first to demand that the cattel, or goods, be delivered them. Co. 5. 93.

At the Common Law if the Tenant had sued a Replevin against his Lord in the County Court, the tenant might have removed the plea into the Court of Common Pleas, and there if the Lord had avowed for his Rent or other services, and the tenant had disclaimed to hold of him, the Lord thereupon should have had a Writ *de droit sur Disclaimer*; and if it were found that he held of the Lord, the Lord should recover the Land in liew of the services for such false disclaimer: But yet this mischief was, that if the tenant had perceived that the Lord would avow, &c. the tenant would have disclaimed, and then presently he should have recovered his damages, and the Lord should have been amerced for that by the disclaimer the County Court was ousted of Jurisdiction, for they could not try this Disclaimer, in as much as they were not Judges of the Record; And the Lord himself could not have removed the plea but in special cases, And by reason hereof the Lords were often at great mischief: Again, if the tenant had sued a Replevin in the County Court, and the Lord had there avowed, and then the tenant had disclaimed, there the Lord had no remedy, For a writ of right of Disclaimer he could not have had in so base a Court (quære) And therefore to take these mischiefs, that stat. of Westm. 2. cap 2. hath now ordained, that after such Disclaimer, the Lord may remove his plea into the Kings Court, where upon every plea he shall have his remedy, &c. which Stat. of Westm. 2. is in these words following. Forasmuch as Lords of Fees, distreining their Tenants for services due unto them, were many times grieved, because their Tenants did Replevy the distresses (by Writ or without Writ) And when the Lords at the complaint of their tenants did come (by Attachments) into the County (or other Court, &c.) and did avow the taking of the distress to be good and lawful, by reason that the Tenants did disavow to hold ought of him which Westm. 2.

which took the distress, and avowed it, He that destreyned was Amerced, and the Tenants went quit; and punishment cannot be there assigned for such disavowing, &c.) It was therefore by the same Statute ordained, that where such Lords cannot obtain Justice in the Counties, (and such Courts) against their Tenants, as soon as they shall be attached at the sute of their Tenants, a Writ (sc. a Recordare or Pone) shall be granted to them to remove the plea, before the Justices, before whom, and none other, where Justice may be administred, unto such Lords) and the cause shall be put in the Writ, because such a man distreyned in his fee for his services and customs to him due, &c. P. Repel. 2. *Recordare.*

Coment que les parols de former stat. de Westm. 2. *sont*, Quam cito attachiati fuerint, *uncore le Seignor poet ceo auxi remover devant ascun attachment, & cy redyment come le plee est commence; Car intant que al Common Ley le plt puissoit aver remove le plee sans cause, la Avowant auxi que est actor & in Liew dun plt puissoit aver ceo remove. Et sic ore per ceo stat. le Seigneur poet remove le plee, cybien come le tenant puissoit devant al Common Ley: Mes le Seigneur ne poet remove le plee sans cause, lou le tenent poet sans cause, &c.*

Et nota que ascun cause que voet inducer favour, ou hatred, est sufficient; Come si un des partyes soit Seigneur del Court, soit de Kin al party, ou si faveat, &c. Vide *auters causes pur Remover.* Registr. fol. 84.

Also because it chanced sometimes that the Tenant after he had Replevied his beasts, would sell them away, or drive them far off, whereby retorn could not be made unto the Lord that distreined, if it were adjudged, and if the Sheriff had retorned upon the Writ de Returno habendo, quod averia elongata sunt, &c. then the Lord might have had a Withernam, to have so many beasts of the Tenants, &c. But if the Tenant had no beasts, &c. then the Lords were without remedy, It is therefore provided by the same Statute, That Sheriffs, and Bailiffs, from thenceforth should not only receive of the Plaintiff, pledges for the pursuing of the sute before they make deliverance of the distress or beasts taken: But also pledges for the retorn of the beasts, if retorn be awarded; And if any take pledges otherwise, he shall answer for the price of the beasts: and the Lord that distreined shall have his recovery by Writ, that he shall restore or delivet unto him so many beasts or cattel; And if the Bailiff be not able to restore or satisfie, his superior (sc. the high Sheriff, or he which made him Bayliff,) shall restore or pay it: (P. Repl. 3.) 13 E. 1. c. 2. *Plegii de proseq.* *De Retorn habend.* Co. L. 145 b.

Vide Br. Detinue. 6. *Et semble que le recovery in ceux cases serra per brief de Detinue,* sc. *si les Pledges ne sont suffic. ou auterment nient accordant al stat. &c. respondeat vicecomes, &c.* de pretio averiorum, &c. sc. *in brief de detinue port vers luy, &c. il delivera al auter tants des avers come ils fuer de queux il fuit d'aver retorne.* Tamen per alios *ceux paroles n'ont tiel intendement, que sils ne retorne suffic' Pledges* de Prosequendo, *que action serra done vers le vic. mes qui si le vic. ne retorne suffic. pledges* de Prosequendo, *que per ceo le punissiment serra come fuit al Common Ley,* sc. *Amerciament, Et que ceux paroles ont relacion solement al Pledges* de Returno habendo. Vide Br. Pledges 1.

Issint ceo stat. de Westm' 2. cap. 2. *icy provide, que lou avant divers foits les beasts fuer esloigns, que ore Pledges serra* de Returno habendo; *Et per ceo si al jour del retorne d'estre fait, les beasts sont esloigne, le vic. poet aver son remedy envers le Pledges.* Lectur.

Mes si le vic. ne prender pledges de averiis returnandis, &c. *& lauter esloigne les beasts, donq; le vic. ou bayliff responder pur le price del beasts, &c.* ut supra.

Sed per ascun opinions, le vic. n'est tenus de receiver ou prender tiels

pledges en ascun auter replevin, sinon tantum *ou le suite ou controversy est per-enter le Signeur & son Tenant pur Rents ou services; mes si soit pur damage fesant, le dit stat. ne tiel dit.* quære.

And note that these Pledges ought to be sufficient as well in Estate, as in Law; for if they be poor in Estate, or if they be insufficient in the Law (as within age, women covert, or persons outlawed, &c.) the Sheriff must answer it: And yet if one of them be sufficient, it seemeth to be well enough. Lectur.

Also there must be at the least two Pledges named, as well de prosequendo, as de returno habendo, for that the Statute in both cases saith Pledges; So that if the Sheriff shall return only one to be a Pledge de prosequendo, and one other de Returno habendo, the Sheriff shall answer according to the form of the Statute.

But if such Pledges shall be sufficient at the first, although they shall afterwards happen to be impoverished, or to dye, or to be outlawed, &c. yet the Sheriff is excused. Ibidem.

Le remedy que le vic. ad vers les Pledges dicitur estre per un Scire facias. *en le quel ils serra compel, ou de pleader chose en discharge, ou de render le value des avers; mes pur eux adire, que ils ne fuer Pledges, ils ne serra resceive, car contra al retorne del viccunt.* Ibidem.

Mes si le suite ou Replevin *fuit en le County per Pleynt devant le vic.* dicitur *que* in Banco Regis, *ne in Common Bank vic. navera* Scire fac. *vers les Pledges: Et* ideo vide *si le vic. ne poet causer le party en tiel case de suer per breif, & donque de trover Pledges in Chancery ou le brief est sue, ou de trover les Pledges la ou le Retorne est d'estre ewe.*

Coment ceux Pledges retorne per le vic. ne serra receive adire que ils ne fuer Pledges encounter le retorne, mes que ils seront charges si les avers sont Esloigne, vic. en apres ils averont brief de Disceit envers le vic. per cause que il ad retorne eux per Pledges de un tiel lou ils ne fuer unqs ses Pledges, Et ils recover lour damages de tant que ils fuer grieve, & indamage. Lectur.

If the Sheriff shall receive or take C. l. or any other sum of money, or any other thing in or for a Pledge of the Return, this is not good, but he must take pledges (or Suerties) for the Return; And so of Pledges de prosequendo. Ibidem.

But yet at this day the Sheriff, or the Bailiff in the Sheriffs name, doth use to take a Bond of the party to whom the Replevin is granted for the prosecuting of the sute, and also to make Return, &c. the form of which Bond you may see hic postea.

Note, that as soon as the Return of the Cattel is awarded to him which did distrein the same, the Sheriff shall be commanded by Writ, to make Return of the Cattel, to the party which took the distress. Stat. 13 E. 1. c. 2. Westm. 2. 2.

A ceo jour sur le brief de Returno habendo, *si le vic. retorne* quod averia Elongata sunt, *la issera un Withernam, &c. Et si le vic. retorne* Nihil habet, *donque issera* 3. Capias, *& un* Exigent.

Apres Retorne del beasts, &c. agard, & retorne de eux fait, si le partie Replevie eux arere, &c. Vide plus le stat. de Westm' 2. c. 2.

Deputies. Also by another Statute made in the times of King Philip and Queen Mary, for the more speedy delivery of Cattel, taken by way of distress, it is further inacted, That every Sheriff shall depute and appoint four Deputies (at the least) in his County, to make Replevies, and deliverance of such distresses, in such manner and form as the Sheriff may and ought to do. 1 & 2 Ph. & M. c. 12.

So then (although by the Common Law the Sheriff could not make Replevies, or deliverance of any distress, without the Kings Writ, as is shewed before, Dyer 246. yet) now by force of these

former

former Statutes, the high Sheriff himself, the Under-sheriff, or any other of the Sheriffs Deputies,(appointed as aforesaid)upon complaint made to them, or any of them, by any man that hath his beasts or other goods taken, and wrongfully witholden or impounded. And upon pledges found de prosequendo, & de returno habendo, &c. may without any Writ to them directed,(in all places) make Replevies, and may presently deliver the distress (sc. the beasts,or goods so taken and witholden:)And also the Sheriff may hold plea thereof, and determine the same in the County Court. *Sans breve.*

Britt. f. 4. But then the Sheriff, &c. is to give day unto both the parties, until the next County Court: At which day the Plaintiff may be essoined if his plaint be entred; But if he make default, then the Defendant may demand Judgment of the Nonsute,and shall have retorn of the distress; And the Plaintiff, and his pledges shall be in misericordia.

But the Defendant may not be essoined at the first day; For if he make default, then the distress shall be awarded to the Plaintiff, And the Defendant in misericordia.

And if both the Plaintiff & Defendant shall appear at the first day (either in person,or by Atturney,)then the Plaintiff ought to count,or put in his Declaration in writing against the Defendant.

Or else the party may have a Writ (sc. a Justicies) (out of the Chancery directed) to the Sheriff; whereupon the Sheriff, or his Bailiff known, and sworn, (after sureties or pledges found, &c.) ought to go to the pound,&c. and to deliver the beasts,or goods,impounded, to the party, and to give day to the parties, ut supra. *Per breve.* Vid. Bract. l. 3. c. 37.

But when a man sueth a Replevin by Writ to the Sheriff, he ought presently to enter his plaint before the Sheriff in the next Country, Fitz. 78. a.

Note, where the Replevin is by pleynt in the County Court, it shall not proceed if any thing touching the freehold come in question Eitz. 70. b.

Also where it is by Writ upon the Pluries not served by the Sheriff his power is determined, and the parties shall plead in Bank. 2 H. 7. 6.

If the Sheriff, or his Bayliff be disturbed in the Execution of this Writ, they may levy a power, &c. and may take such disturbers, and imprison them.

And if the Bayliff shall return that the party will not suffer the deliverance to be made, the Sheriff (whether it be before him without Writ, or by Writ) may of his own authority award an Attachment, and after a Distringas, until he comes in; and if, (when he cometh in) he be convicted, he shall make a Fine to the King before the Sheriff (ut dicitur) and this seems to be by force of the Statute of Marl. cap. 3. Lectur.

Britt. 54. But if the beasts, or goods, be in an house, so as the Sheriff or Bailiff cannot come by them; or be driven,or carried into another County,&c. then may the Sheriff take of the goods,or beasts of the Defendant (to the double value)in Withernam: See hic antea Bract: lib. 3.

Fitz. 77. c. But if the party that took the goods,do claim property in them in the County, then the power of the Sheriff, or his Bailiff ceaseth and determineth,so as they may not Replevy or deliver them,whether it were by Plaint,or by Writ;but the other party ought to sue his Writ De proprietate probanda. Vide Fitz. propriet. probanda 4. Note that the servant may not claim property for his Master. Nor an Estranger cannot claim property;but that the Sheriff ought to

Vide plus hic c. 70. Fitz. prop. prob. 1. 2. 5. Co. L. 145.

make deliverance notwithstanding the strangers claim; and may make deliverance notwithstanding the servants claim.

But one Defendant may claim property.

Note also that upon property found for the Plaintiff, the Sheriff shall make deliverance, and then also upon sureties found by the Plt' de prosequendo, the Sheriff shall also attach the Defendant to answer as well the King as the party: Fitz. propriet' proband' 3. Dyer 173. & Register f. 83. accord. Et per Co. 8. 60. a. *le defendant que claime propertie fauxment,&c. serra fine & imprison, mes ceo serra per les Justices* in Banco, *& nemy per le vicount*. See hic cap. 73.

Upon a Replevin directed to the Sheriff if the Defendant claimeth property, the Sheriff may not make deliverance but must return, Quod defendens clamat averia,&c. esse sua. And then upon the Writ, de proprietate probanda, the Sheriff in his County Court, and before the Coroners, shall Impanel a Jury, to Enquire, (in præsentia partium if they will) of the property (sc. to whom the property at the time of the taking was.) And if the property be found in the Deff. the Plt. shall be Amerced by the Sheriff. And if it be found that the Deff. had nothing in the Cattel or Goods, then he shall yield damages to the Plt. and shall also by the Justices be committed to prison, there to remain until he hath paid a Fine to the King; and the Sheriff may presently Attach the Deff. hic antea titulo Replevin.

Note that in a Proprietate probanda, the Jury are not to Enquire but only to, or in whom the property was at the time of the taking. Fitz. Proprietate probanda 5.

Also if the Defendant claims property, where the trial is (in the County Court) by Pleynt, the Plaintiff may have a Writ de Proprietate probanda to the Sheriff, to try the property; and if thereupon it be found for the Plaintiff, then the Sheriff is to make deliverance; and if it be found for the Defendant, then the Sheriff can no further proceed. Co. L. 145. vide *plus la*.

And in such case the very title of the Cattel, or Goods shall be tried, and given in Evidence before the Sheriff. Fitz. Propriet. 5.

Nota que sur cest briefe de Proprietate probanda, *le party poet challenge le Jury*. Quære.

Auxi sur le verdit del Enquest, Atteynt poet estre sue.

Mes ceo briefe de Proprietate probanda *ne gist, ou ne serra grant sinō lou le Replevin est sue per brief. Et nēy ou est sue per pleynt: Auxi ne serra grant sinon sur Retorne del vic.* Fitz. Propriet. prob. 4. *Auxi* dicitur *que si un come bayly al un auter clayme property a son Maistre que per cel clayme le vic. ne lessera per faire le deliverance, pur ceo que sur ceo clayme la ne issera ascun brief de* Proprietate probanda, *Et que nient Obstant un clayme de property, que le vic. fera le deliverance, sinon lou sur le clayme brief de* Proprietate probanda *isser': Et lou un come bayly al auter claime property, nul brief isser' de Enquirer de ceo, & le cause est pur ceo que si soit trove que son Maistre n'avera nul property, le Maistre alleroit al prison, & feroit fine al Roy, &c. le quel seroit mischeivous, que le Maistre serra fine & imprison per un faux clayme de son servant. Et sic nota que nul brief de* Proprietate probanda *issera, Ne le vic. tergera de faire deliverance, sinon cēy a que droit le property est clayme, soit party al brief.* Lectur. Tamen vide 11 H. 4. f. 4. Fitz. Propriet. probanda. 1. & hic antea & Quære.

Replev. If a man sue a Replevin in the County, by Plaint, without Writ, and the Sheriff maketh his precept to the Bailiff to make Repleby, & the Bailiff returneth to the Sheriff at his next County, that he cannot have the view of the Cattel to make deliverance, &c. or that they be Essoigned, Then the Sheriff at the same County 9 E. 4. 8. 48. Fitz. 74. b. c. Westm. 1. cap. 17.

County Court ought to enquire thereof by an Enquest (of Office.) And if this be found by Enquest, that the Cattel be Esloined, (or conveyed away, &c.) then the Sheriff in the same County Court may award, (ex officio) a precept, in the name of a Capias in Withernam, directed to his Bailiff, to take the Beasts of the Defendant, &c. or else the Plaintiff may have a Writ out of the Chancery to this purpose. Fitz. 74. b. c. & le Register 81. 82.

Fitz. Wither 2 & 10 N. Bre. 45. See Fi. 119.

Withernam.

But whether the Beasts of the Defendant, being taken in Withernam, shall be delivered to the Plaintiff, or that the Sheriff shall keep them, &c. may be a question: It appeareth by the words of the Writ (of Withernam out of the Common place) that the Sheriff shall keep them, until the Sheriff can make Replevy and Deliverance to the Plaintiff of his Cattel, and so is the Book, 2 H. 4. Fitz. Wither. 3. that the Sheriff shall keep them: And yet by the use of the Kings Bench they shall be delivered to the Plaintiff, and to have them until his own shall be restored to him again. Fitz. 73. f. & 74. a. b. d. Dyer. 59. & 189. & Finch. 119. & le Na. br. 45.

And therefore where the Sheriff in his County Court shall award a Withernam, quære, if there the Sheriff may not either keep the Cattel himself, or deliver them to the Plaintiff (to keep until, &c.) at his pleasure; And whether the Sheriff or Plaintiff shall have the keeping of them, it seemeth reasonable that the Defendant shall also pay for the keeping of them before he hath his Cattel again.

For the form of this Precept from the Sheriff to the Bailiff, to take the Beasts of the Defendant in Withernam (although in other cases the Sheriffs command to his Bailiff by word only sufficeth, as you may see hic cap. 21.) yet this Precept must be by writing, and ought to be ensealed with the seal of the Sheriffs Office. Vide 22 H. 6. fol. 40.

But the Sheriff upon complaint made to him of Cattel taken, &c. may command his Bailiff by word of mouth, to make Replevy of them; and it is as good, as if it were by a precept in writing; for there a more speedy delivery of the Cattel is required, And perhaps the Sheriff, nor his Bayliff have any thing about them wherewithal to write, &c. Fitz. 69. e.

Command per parol.

Si home sua Replevin de potts & panns, Withernam *serra des autres biens al value* 31 E. 3. Fitz. Whiter. 9. See hic cap. 80.

Vicount in pais agard' un Withernam *a prender al value, & nemy al Nomber.* Vide Fitz. Wither. 7. & 10.

Vicount bien agarder Withernam *sur plaint avant luy in pais, Et ceo sur Elongment Retorne per son Bayliffe; Mes covient primes de enquirer per enquest, si le Retorn' del Bayliffe soit voier, &c.* Fitz. Wither. 2. & 10.

Fitz. 17. p. *Le proces sur cel* Withernam, est Alias, & Plur. & sic infinite. Fitz. 74. p.

Now where the Pleynt in the County Court is of *prisel des avers,* (sc. of taking and witholding Cattel or other goods,) the Entrie must be made in this manner, or the like following:

I. S. Queritus versus *I. D.* de placito Captionis, & injuste detentionis averiorum ipsius *I. S.* contra vad. & pleg. Et invenit plegios tam de clamore suo prosequendo, quam de averiis suis returnand. si Retorn' inde adjudicetur, sc. *Johannes* Den. & *Richardus* Fen.

And in this Pleynt of *prisel des avers,* the precept to attach the Defendant must be to this effect following.

The

The Form of a Replevin.

Replevin. A.B. miles vicecomes com' præd' ballivo hundred' de H. nec non *Jo. S.* ballivo meo hac vice & eorum utrique, conjunct' & divisim salutem, Quia *W. P.* invenit mihi sufficient' securit' tam de clam' suo prosequenddo, quam de averiis suis (*viz.* una spadone, tribus equis sive uno bove, &c.) quæ *Jo. C.* cæpit & injuste detinet, ut dicitur retor', si retor' inde adjudicetur, Ideo ex parte dñi regis vobis & utrique vestr̄ conjunct' & divis. mando, quod repl' & deliber' fac' ꝑfat' *W.P.* aver' sua præd. (sive bovem præd') Et quod ponat' seu,&c. ꝑ vad',& salvos pled' ꝑfat' *Jo.C.* Ita quod sit ad ꝓxim' com' meum apud castrum Canteb' tenend', ad respondend' ꝑfat' *W. P.* de pl'ito captionis & injuste deten', aver', suor' præd. Et qualit',&c. Mihi ad ꝓxim' com' meum certificet' seu, &c. sub periculo incumbent', dat' sub sigillo officii mei, Ultimo die Julij añ regni dñi nr̄i *Jacobi* Dei grac' Angliæ Scotiæ Franc' & Hiberniæ regis fidei defensor',&c. *viz.* Angliæ Franc' & Hiberniæ vicesimo & Scotiæ quinquagesimo sexto. Canteb.

ꝑ me *A. B.* Milit' Vic'.

Or thus;

A.B. miles vicecomes com' præd. ballivo hundred' de Radfeild, Necnon *B. C.* ballivo meo hac vice itinerante,&c. Ex parte Dñi Regis vobis & cuilibet vestrum conjunctim & divisim mando quod deliberari facias, *R. D.* averia sua quæ *K. W.* cepit & injuste detinet contra vad' & pleg. ut dicitur. Et pone per vadios & salvos plegios præd. *K. W.* quod sit ad proximum Comitatum meum apud C. tenend' die, &c. ad respondend' præfato *R. D.* de pl'ito prædicto,&c.

And if this Replevin be granted by a Deputy, to the Sheriff, then he must set his name to the Replevin, Thus;

ꝑ me *I. A.* unum deputat' dicti
Vic' secund' formam statuti.

Mes le vic. (*ou son Deputy, &c.*) *devant cel Precept fait, doit prender* (*Obligation, ou Pledges,* sc.) *suffic. security del plt,* de prosequendo, & de Returno habendo *si, &c.* (ut supra) *auterment le vic. render al avowant le value del avers replevy, si retorne soit agard. Le forme del Obligation & Condition, sequitur icy.*

Si le vic. (*ou son Deputy, ou Bayliffe*) *retorne pur Pledges certein persons, lou ne sont nul tiels, la il est sicome il ad receive ou retorne nul Pledges, Et in tiel case le vic. &c. serra charge de render al avowant les avers ou biens, ou le value del eux,* ut supra.

Si le vic. retorne Pledges, lon revera ils ne fuer' Pledges, ou ne ont consent, uncore dicitur que le Seigneur, &c. avera Scire fac. *vers eux,* (*& que ils ne serra receive adire que ils ne fuer' Pledges, enconter le Retorne del vic.*) *Et que ils serra charge si les avers, &c. sont esloyne: Et apres ils poient aver lour brief de Disceit envers le vic. pur retorner eux Pledges, lou ils ne fuer' revera; Et in ceo ils, rocover' lour damages vers le vic.*

Mes si l'avowant sua Scire fac. *vers les Pledges, il n'avera remedy apres vers le vic. ou auter Officer.*

Now by force of the former precept of Replevin, the Bailiff must go to the place where the Cattel, &c. whereof the pleynt is persued be within the Shire, and shall deliver the Cattel to the Plaintiff: And

And also shall Attach the Defendant to appear at the next County Court, to answer to the Plaintiff, in his Plaint.

This Attachment of the Defendant must be made by the Officer of the Defendants goods; And the goods so attached the Officer may keep in his own possession until the next Court, Or the Officer may suffer the Defendant to repleby the same by two Pledges, &c. in such manner as is before declared, and as he may do in a plee of Dett, or Trespass.

When the Replevin is sued, and the goods delivered, and then the Plaintiff becomes Nonsute in his Pleynt, if the Defendant be ready in Court to avow the taking, then shall there be awarded to the Defendant. *Retorne des Avers*, in this manner following.

Retorne des Avers.

A. B. miles vic. com' præd. ballivo Hundred de *R.* &c. Quia *R. D* averia & catalla quæ *W. B.* cepit, &c virtute Querimoniæ suæ inde præsens fac. replegiare fuerint. Non est prosecut. querelam suam prædictam, Sed ad Comitat. meum tentum apud C. die &c. exact. defalt. fecit, per quod per Considerac. ejusdem Curiæ adjudicat. fuit prædicto *W. B.* Returñ averior. & catallor. prædict. quæ præfato *W. B.* absque breve Dñi Regis de Judicio deliber. non possunt, Ex parte Dñi Regis tibi mando quod præfato *W. B.* de averiis & catallis illis retorñ fac. Datum sub Sigillo, &c.

And thereupon the Officer shall deliver to the avowant the first Distress.

And if the first Repl' be not executed, then the Sheriff or his Deputy, may grant an Alias Replevin and so a Pluries Replevin, vel causam mihi significes; and after toties quoties, if need be.

An Alias Replevin.

Cantebr. A. B. miles vicecom' com' præd. ballivo hundred' de R. Necnon *I. S.* ballivo meo hac vice, &c. Quia *W. P.* invenit mihi sufficient' securitatem tam de clamore suo ꝓsequendo, Quam, &c. (ut supra) Ideo ex parte dñi regis vobis, & utrique vestrum conjunctim & divisim mando, sicut alias vobis mand' averia præd. (sive bovem prædict.) eidem *W. B.* sine dilatione replegiare fac', seu unus vestrum repleg' fac' vel causam mihi significet, vel unus vestrum signif. Quare mandata mea vobis inde directa exequi noluisti aut non potuisti. Et quod ponat' seu unus vestrum ponat per vadios & salvos pleg. præfa. *Io. C.* Ita quod, &c. (ut supra.) *Alias Repl.*

And if the Bayliff do not deliver the Plaintiff his cattel upon this Alias Replevin nor shew sufficient cause why he did not, then the party may have a pluries Replevin, which must be made Verbatim, as the Alias Replevin was made, only, changing this word Alias into Pluries. *Plur' Repl'*

And so note, that upon all these Replevins, there must be security given by Pledges, or else a Bond (of ten pounds at the least) taken of him to whom the Replevin is granted, for his appearance at the next Court after, and for the prosecution of his sute, and to make return of the cattle, if return be adjudged.

The form of which Bond and Condition must be as followeth.

The Obligation. Noverint universi per præsentes me *Will' P.* de C. in com' C. geñ teneri & firmiter obligari *A. B.* milit' viceom' com' præd. in decem libris bonæ & legalis monetæ Angliæ solvend' eidem vic, aut suo certo atturnat', executor, vel admiñ suis. Ad quam quidem solutionem bene & fideliter faciend', obligo me hæred' executor & admiñ meos firmiter per præsentes, Sigillo meo sigillat' dat' &c. (as all other Bonds are.)

The Condition. The condition of this present obligation is such, that if the above bounden W. P. do appear at the next County Court to be holden at the Castle of Cambrige, and then and there do prosecute his action with effect against I. C. for wrongful taking and detaining of his catel, viz of one Gelding and three Horses, as is alledged, and do also make return thereof, if return thereof, shall be adjudged by law, and also do save and keep harmless and indempnified, the above named Sheriff, his Under-sheriff, and Bayliffs, for touching and concerning the delivery of the said cattel, That then this present Obligation to be void and of none effect, or else the same to stand, remain, and continue in full force, strength and vertue.

Recordare. And if in this case the taker of the cattel do justifie the taking, as in his Freehold, then the County Court can proceed no further therein; but the cause must be removed from thence by the Kings Writ (out of the Chancery) called a Recordare facias loquelam, directed to the Sheriff, retornable the next term following, either into the Kings Bench, or into the Court of Common Plees which the party will: and then this Writ of Recordare ought to be openly read and allowed in the said Court, to the end that notice may be given thereof to the Plaintiff in the Replevin, that he may appear at the day of the return thereof, and declare against the taker of his cattel, or else the taker will have a Retorno habend' averior, to the disadvantage of the Plantiff.

Mes soit le plee pendant en le County Court per brief, ou sans brief, le deff.ne poet remover cel plee del Replevin, *hors del County en* Banco, *sans surmise en le* Pone, *ou* Recordare; *Et pur ceo il est use a faire surmise en le brief, & le brief dit, fiat* Executio istius brevis si causa sit vera, & aliter non. Plo. 208.

Auxi per cest removement de plee, rien serra remove, forsque le Plee, & le Avowry; mes le Proces, & continuance de ceo, ne serra remove.

Et si al jour que ils aver per prefixion en le brief que remove le plee, le deff. soit absent, Attachment, & Distress issera, & per default sur ceo proces de Utlary: *Mes si celuy que ne remove le plee face default, un garnishment issera, Et sil ne appiert* Retorne *serra agard, &c.*

Authoritie del Court. Now concerning the authority of this court, & of the Sheriff, &c. therein.

If a man be convicted before the Sheriff and the Coroners (in his County Court) in a Writ of Recaption, the Sheriff may amerce him deeply or grievously, and also may award damages to the party; but the Sheriff can impose no fine in this Court upon any offendor, for that no Court can impose any fine, but such Courts as are Courts of Record, whereas the County Court is no Court of Record: Co. 8, 41. & 60. & 11. 43. Fitz. 73. d. old N. bre 45. *Co. 8. 41. 2. & 60. b.*

Si le Signeor prist excessive distress (come x. *boeffs pur* ij. s. *de rent, &c.) & de ceo le tenant fait son Pleynt en le County Court, & le Signeor ceo confess, semble il serra amerce la, per force del Statut' de* Marlebr. cap. 4. *Auterment est ou le Signeor distreyne pur homage, fealty, ou suite; ou pur damage fesant: En le premier case le Signeor ne serra amerce, pur ceo que les services ne sont apportionable, ne valuable.* Br. Distr. 2. 36. 79. & 80.

Mes si le Signeor ne poet trover un auter distress sur le terr, forsque distress que amount al 40.*s. per rent de* ij. s. *la il ne serra amerce.*

Si le Signeor distreyne son tenant pur damage fesant, ou pur son rent, suite, ou services, & enchase les beasts hors del County, semble que il serra amerce, per force del dit Statut' de Marl. cap. 4. vide Br. Distress. 37. & 54. & Fitz. Barr. 120. & Distr. 1.16.

Si home soit Nonsuite en le County Court, il serra Amerce la.

Issint del defend' serra amerce in ascun suit sue vers luy (en le County Court) si ceo soit trove vers luy. Kitch. 112.

Issint ou le defend fault de faire sa Ley al jour que a[illegible] est done, en ascun pleynt sue la vers luy. Statham 12. R. 2. fol. 65.

Mes si tiel Amerciaments sont outragious, ils avera briefe de Moderata misericordia, *& ceo per le Statut' de* Mag. Chart. cap. 14. Fitz. 75.f.

Et semble per mesme le Statut' que tiel Amerciaments in le County Court serra affere per Pares. Or rather it seemeth now by the Statute of 11 H. 7. cap. 15. that two Justices of Peace shall first view the Estreats of the Amercements of the Sheriff, and that the same Estreats must be Indented betwen the said Justices, and the said Sheriff, and sealed with their Seals, before that the Sheriff (or his Officers) may levy the same Amerciaments.

Jurors summon al County Court, sils ne appeare (mes font default) ils serra amerce, sinon que assets appeare sur mesme le Pannel.

Auxi nota, quod de quolibet placito quod in Comitatu deducitur & terminatur, Misericordia quæ inde provenit vicecomiti debetur, quæ quanta esse debeat per nullam assisam generalem determinatum est; Sed pro consuetudine singulorum Comitatuum debetur, in quodam Comitatu plus, in quodam minus. Glanv. lib. 9. c. 10.

Uncore briefe de moderata misericordia *gist, lou home est amerce in le County Court (ou in auter Court Barron) de plus que doiet a'aver estre amercie & nul ayant regard al quantity del trespass, & si le vic. ne moderate le Amercement poiet suer briefe* Sicut alias, *& apres Attachment gist vers le vic. & apres distr. ou proces de* Utlary, &c. N. brev. 47.

Et tiels Amercements serra auxi assesse per pares, ayant regard al quantity del trespass. Ibid. & Stat. Mag. Charta, cap. 14.

Also (it seemeth) that if any contempt or disturbance to the Court be made before the Sheriff or Steward, in the County Court, they may amerce such Offenders, for such contempt or disturbance. But such Amercement needeth not to be affered: for whereas the Statutes of Magna Charta, c. 14. and of Westm' 1. c. 6. will, quod nemo amercietur nisi secund' quantitatem delicti, which cannot be known but by affering, yet it seemeth that the Statutes, and this affering are to be understood for Amercements set or imposed for offences committed or done out of Court, and not of contempts or misdemeanors done or committed in Court, Co. 8. 41. & 11. 43.

Court, before the Judge or Steward there; who having conusance thereof, and of the manner and quality of the offence, are the more meet to impose, tax, and assess such amercements for such offence; and so such amercement to be in the nature of a fine imposed (by the Sheriff or Steward) upon the offenders: See 10 H. 6. fol. 7. Br. Amercement 50. & Co. 8. 41. Fitz. 75.

And for an amercement in the County Court, the Sheriff may distrain throughout all the County: 2 H. 4. Br. Dist. 13. and shall have all such amercements to his own use as it seemeth. See hic cap. 124.

Imprison. But the Sheriff may not imprison one, nor arrest, nor take the body upon the Writ de Nativo habendo, &c. (Br. Faux. Imprif. 30.) Nor in any other suit, Nor for any contempt or offence done in the County Court, as it seemeth. Fitz. 132. c. 133. Regist. 153.

Recog. The Sheriff in his County Court may take a recognisance to pay another a certain sum of money at a certain day, and if it be not paid at the day, the conusee may have a Writ de Executione facienda, out of the Chancery to the Sheriff to make Execution thereupon, & to Levy the money de bonis & catallis of the Defendant. *Et in tiels Cases semble que le vicount poet vender les biens le partie, pur payer le Conuzee &* Fitz. 133. b. vide *le viel* Na. br. 67. & Register. 153.

And this is where there is a Plea of Debt depending in the County Court before the Sheriff, between two, either of the parties may there acknowledge a Recognisance (before the Sheriff) to the other party, of any sum of money (as it seemeth) and that whether the Plea be there depending by Writ, or without Writ, as Master Fitz. held.

Also if a man will come in to the County Court before the Sheriff, and there in Court will acknowledge to owe, or pay a certain sum of money to another person at a certain day, &c. when there is no plaint of action depending there between the parties, it seems by the opinion of M. Fitz. that such recognisance is good, if it be under the sum of forty shillings. Fitz. 133. a. And the party shall have the Kings Writ de Si Recognoscat directed to the Sheriff to make Execution of such a Recognisance. Ibid.

And by this Writ de Si Recognoscat, the Sheriff may distrein until the Cognisor hath made gree to the party for the debt. Na. br. 67. *Le forme del dit briefe al vicount pur faire execution.* Vide Register 152. Fitz. 133. b. N. Br. 67.

Mes il semble per le dit briefe de Si Recognoscat, que si le recognisor ne voile recognostre le det arere devant le vicount quant il vient a luy de faire execution, &c. mes dire que il ad ceo pay, &c. que donque le vicount per le dit briefe ne poet faire execution de ceo. Auxi istud briefe non sit nisi de pecunia numerata. N. br. 67. Fitz. 133. b.

And yet Mr. Brook, tit. Recog. 16. & 18. seemeth to doubt, whether the Sheriff at this day may take a Recog. in his County Court, it being no Court of Record; especially, except the Recog. be taken upon a Plea depending there before the Sheriff by a Writ of Justicies, in which case the Sheriff is a Justice by Commission, for that the Justicies is a Commission to him, And all Commissioners who have Authority to sit in Justice for the Commonwealth, may take a Recog. as appeareth here before. Cap. 27.

Auxi quant al ascun matters; le County Court est Court de Record. Vide hic cap. 4. & 111.

Again in a Writ of Right depending in the Lords Court, the Sheriff at the request of the Defendant may grant a Tolt to remove the Plea into the County Court. Fitz. 3. f. 4. a.

CAP

CAP. 114.

Finch 115. Knights for the Parliament, Coroners, and Verderers. } their Election is alwaies made by the Kings Writ, (directed to the Sheriff) and made in the open and full County Court. Fitz.63.64. *Knights del Parliament, esley al Countie.*

And these must all be chosen by the Freeholders of the same County. (Fitz.163.k.164.c.) And to be published there.

And the Sheriff is to return and certifie into the Chancery, every such Election (of the Knights, Coroners, and Verderers) and the names of those which are so chosen, to any of these places. Fitz. 163. k.

See hic antea fol. The Knights for the Parliament are to be chosen between the hours of eight and eleven of the Clock in the forenoon, and Sedente Curia; And being so chosen, are also to be published there by the Sheriff.

The names of such Freeholders as are at the Election of Coroners, and Verderers, ought to be set down in the County Court Book for to certifie such their Election. *Coroners & Verderers.*

And yet the Coroners their Election also may be by Voices, or by holding up hands, &c. (as the Knights of the Parliament, whereof see hic antea fol.) and then their names or number cannot be certainly known nor set down. Pl.126.a.

Also the Sheriff is to minister unto the Coroners and Verderers, their several Oaths for the due execution of their Offices. Fitz.163.m.164.c.

When the Coroner is chosen, the High-sheriff of the same County, or his Under-sheriff, must give him his Oaths, as followeth. *The Coroners Oaths.*

First the Sheriff shall give the Coroner his Oath to the Supremacy.

The form of which Oath. See hic antea fol.

Then the Sheriff must give the Coroner his Oath concerning his Office, as followeth.

The Coroners were anciently Knights. See Register 177. b. & stat. Westm. 1. cap. 10.

There be commonly four Coroners in every County.

There be certain special Coroners within divers Liberties.

There is also the Coroner of the Kings House.

The several Offices of every of these Coroners. See Minsh.

The Form of the Coroners Oath, for the due Execution of his Office.

YOu shall swear, that you well and truly shall serve our Soveraign Lord the Kings Majesty, and his liege people, in the Office of a Coroner: And as one of his Majesties Coroners of this County of *Cambridge*: And therein you shall diligently and truly do and accomplish all and every thing and things appertaining to your Office, after the best of your cunning, wit, and power, both for the Kings profit and the good of the Inhabitants within the said County, taking such Fees as you ought to take by the Laws and Statutes of this Realm, and not otherwise: So help you God, and the holy Contents of this Book: *and so let him kiss the Book, to affirm his Oath.*

The Coroners are Judges of the Utlawries, and are to sit with the Sheriff at every County Court, there to give Judgments

upon the Utlawries (as appeareth before, cap. 110.) And they are to give, and pronounce the Judgment, and to make a short remembrance thereof in their book; But the Coroners are not to make Return of the Utlary, For the custody of the Record it self doth not appertain to the Coroners, but the Sheriff is to have the keeping thereof, and of the Exigent, which is the Sheriffs Warrant to Proclaim the Judgment, and which Record with the Exigent, the Sheriff is to return into the Kings Bench, &c. Dyer. 223. Finch. 116.

And the Sheriff shall have Counter Rolls with the Coroners, of all things belonging to the Office of Coroners, Stamf. 64. Fitz. Coron. 186. see hic cap. 100.

The forms of the Kings Writs for the choosing of the Coroners and Verderers: See in the Register fol. 177. & Fitz. 163. 164.

The form of the Verdurers Oath: See.

The effect of the Verdurers Oath is to this purpose.

They are sworn to maintain, and keep the Assises (sc. the Orders and Ordinances) of the Forest, and to view, receive, and Inroll the Attachments and Presentments of all manner of Trespasses of the Forest, of Vert, and Venison, Minsh. vide Rastal tit. Forests. div. 16 & 1.

In the time of the Fence moneth, or Fawning of wild beasts of the Forest, at the Court of Swainmote then holden, these Verdurers are the Judges of that Court, and are to direct all the other Officers of the Forest in their course, &c. Mr. Manwood. fol. 74.

At other times their Office is properly to attend the Vert, and to see that it be well preserved and kept. Cromp. Author. des Courts 165.

Vert, this word taketh that name, *à viriditate*, of greennesse, and in Latin it is called viridis, whereof this word viridarius, a Verdurer cometh, sc. one who doth take the charge of the Vert. Manwood. fol. 37.

And the word Vert doth comprehend every thing that doth grow, and bear green leafs within the Forest, that may cover and hide a Deer in it, and more specially such Woods, Trees, or Bushes as do bear fruit, which is food for the Deer in Winter (as Acorns, Apples, Crabs, Sloes, and Hawes, &c.) Manw. 6. 33. & 35.

Also Proclamations are openly to be made by the Sheriff, &c. in his full County Court, in divers cases.

1. First upon receipt of the Kings Writ for summoning the Parliament.

2. Upon receit of the Kings Writ for Levying the Expences of Knights of the Parliament.

3. In cases of Utlary.

4. Upon Processe against persons Indicted, or Appealed, dwelling in a forein County.

5. Upon a Writ de Excom' Capiendo.

6. In cases of Riots certified into the Kings Bench.

7. Upon the Grand Distresse, in Writs of { Admeasurement. Mesne. Ward. }

See more fully for every of these, hic antea, cap. 102.

CAP.

CAP. 115.

Now concerning the Sheriffs Officers, &c. his Under-sheriff, Clerks, Deputies, Bayliffs of Hundreds, and Gaolers.

I Will here first set down what security is commonly taken by the High-sheriff from his said Officers: And then certain general observations or rules concerning them all; And after I will treat more particularly of every of them by themselves.

First, it is meet and safe for the High-sheriff, to take good security for his Under-sheriff, and other Officers, before he trust them with their Offices: And for this, commonly the High sheriff taketh Bonds and Covenants of the Under-sheriff and friends; As also of his Bayliffs, and Gaoler.

The form of an Indenture between the High-sheriff, and his Under-sheriff.

W.9.10. THis Indenture made, &c. between R. O. of in the County of *Cambridge* Esquire on the one party; and *H. K.* of G. in the said County Gent' of the other party, witnesseth, that whereas the said *R. O.* being by the Kings most excellent Majesty appointed to be high Sheriff of the said County of *Cambridge*, & of the County of *Huntingdon*, for this year to come, hath upon special affiance, confidence, and trust, that he hath and beareth in and towards the said *R. H.* promised and granted to the said *R. H.* the use of the exercising of the Office of his Under-sheriff of the said Counties, together with all fees, profits, commodites, advantages, casualties, allowances and other emoluments, certain and uncertain whatsoever, to the Office of Under-sheriffwick, belonging, or in any wise appertaining, that any (*quere* what these be, in particular, else they may much wrong the High-sheriff) Under-sheriff of the said Counties, hath theretofore justly and lawfully claimed or had, To have and enjoy during, and by all such time as he the said *R. O.* shall be, remain, and continue High-Sheriff of the said Counties, this appointment or election not discharged. *In* consideration whereof the said *R. H.* convenanteth, granteth, and agreeth, and faithfully promiseth for him, his heirs, executors and administrators, that he the said *H. R.* his heirs, executors or administrators shall and will discharge, or otherwise sufficiently save and keep harmlesse, as well the said *R. O.* his heirs, executors, and administrators, as also his and their, and every of their goods, chattels, lands tenements, and hereditamenrs of, and from all, and all manner of troubles, vexations, sutes, actions, informations, complaints, contempts, fines, forfeitures, amerciaments, penalties, pains, sum and sums of mony payable, or leviable to, or for the Kings Majesty, or any other person or persons whatsoever, for any matter or thing to be done, in or about the said Office. *And* of and from all, and all manner of losses, hindrances, and damages, that shall or may be lawfully moved, stirred, procured, commenced, prosecuted, happen or fall, or lawfully asked, demanded, or levied upon the said *R. O.* his heirs, executors or administrators, or of, or upon his or their, or any of their goods, chattels, lands, tenements or hereditaments, for or by reason of the said Office of Sheriff, either, by non-Returning or unlawful returning, slow returning, or misreturning of any precepts, writs, warrants,

[Left margin: Quære, if this be not contrary to the Sheriffs Oath, Artic. 12. and contrary to the Stat. see hic cap. 2. & 3.]

[Right margin: *Les Profits.* — *De saver harmlesse generalment.*]

warrants, or processe to the High Sheriff directed, or to be directed; or for by cause or means of any excessive or unlawful extortion or exaction, or takeing of any mony, or other gain, or commodity for the serving or not serving of any such Writs, Warrants, Precepts, or Processe, or for or by reason of any misdemeanor, misusing, or misgovernment, negligence, lack of skill or of ignorance that shall be in the said *H. R.* in or about the doing, exercising, or executing of the said Office of Under-sheriff. *And* the said *H. R.* for himself, his Heirs, Executors and Administrators by these presents doth further covenant and grant to and with the said *R. O.* his Heirs, Executors and Administrators, in like manner to discharge, or otherwise to save harmlesse and indempnified as well the said *R. O.* his Heirs Executors, and Administrators, as also all their goods and chattels, lands, tenements, and hereditaments, of and from all manner of escapes, both wilful and negligent, of Traytors, Felons, and all other prisoners committed, or to be committed to his or their safe keeping, or charge, from breach of prison, and of and from all fines, forfeitures, amerciaments, sums of money, and penalties that he or they, or any of them shall or may incur, bear, pay, or sustain, for any escape or breach of prison, during all the time of his continuance in the said Office of High Sheriff of his appointment. *And* moreover the said H. *R.* shall give attendance convenient and requisite, upon the Kings Courts at Westminster, upon the Judges of Assises and Justices of Peace, and other Commissioners and Officers within the said County, upon whom the said *R. O.* or the said *H. R.* in respect of the said Office of Sheriffwick ought by the laws of this Realm to attend. *And* furthermore shall within one year next after the discharge of the said *R. O.* from his said Office, justly and truly make a perfect account in the Kings Eschequer, or elsewhere, of all the sums of money, receits, and other things wherewith the said *R. O.* shall or may be charged as Sheriff of the said Counties of Cambridge and Huntingdon, and shall within the said time or year deliver unto the said *R. O.* his Heirs, &c. a sufficient acquittance or *quietus est*: *And* it is further agreed upon by the said parties to these presents, that every one of the Bayliffs of Hundreds, and also other the Officers under the Sheriff, shall enter into sufficient bond by obligation, that they and every of them shall truely and diligently deal in, exercise and execute their Offices during the time aforesaid. *And* if any shall refuse to enter bond, or shall misdemean himself in his or their said Office, that then it shall be lawful to, and for the said *H. R.* in his discretion to place another meet for that Office, in the room of such person that shal refuse to enter bond, or shall misdemean himself, as is aforesaid. In witnesse whereof, &c.

Extortion.

Escape.

A doner Attendance.

De faire son Account

Lour bailiffs.

The

Another form of Indenture between the High-sheriff and his Under-Sheriff.

West. Pl. 75. THis Indenture made, &c. between *F. S.* Sheriff of the Counties of *Cambridge* and *Huntingdon*, Esquire, of the one partie, And *A. G.* of, &c on the other party witnesseth, that it is covenanted, &c. that is to say, The said *F.* doth by these presents ordain, constitute, depute and make the said *A. G.* his Under-sheriff in the said Counties of *Cambridge* and *Huntingdon*. And to have, occupie, and enjoy the said Office of Under sheriff there to the said *A. G.* during all such time as the said *F.* shall continue and be in authority of the Office of the said Sheriff of the said Counties of *Cambridge* and *Huntingdon*, by vertue and authority of our said Soveraign Lord the Kings Majesties Letters Patents of the Office of Sheriff there to him directed, bearing date, &c. *And* also that the said *F.* doth by these presents graunt, &c. to the said *A.* that he shall and may take and have during the said term, all manner of fees rewards, and profits lawfully to the said Office of Under-sherif, (learn what these be,) or for serving, executing, or returning of any manner of Writs, Warrants, precepts, or processe in the said Counties of *Cambridge* and *Huntingdon*, belonging or appertaining. *And* the said *F.* doth by these present grant, assign, and depute to the said *A.* the lawful ordering, custody, and government, of all and singular manner of Gaoles, Prisons, and of the Prisoners now, or hereafter to be therein, to be lawfully and duely ordered, kept, and demeaned, by the said *A.* or his Deputie or Deputies, servant or servants, during the said term that the said *F.* shall have the said Office, or the custody, order, or government of the said Gaoles, Prisons, and Prisoners, by vertue and authority of the said Office of Sheriff, and Letters Patents aforesaid. *In* consideration whereof, the said *A.* doth by these presents grant, &c. to and with the said *F.* that he the said *A.* and his Assigns, shall at all and singular time and times from time to time after the date of these presents, conserve, discharge, exonerate, save harmlesse, and acquit the said *F.* his Heirs, Executors, Administrators, and Assigns, and every of them, (and the sureties of them and every of them) of, for, and from all and all manner of forfeitures, payments, and fines, pains, penalties, amerciaments charges, losses, issues, damages, incumbrances, and demands whatsoever in any wise, in any Court or elsewhere, to be set, assessed, paid, or sustained, suffered, or had to our said Soveraign Lord the Kings Majesty, his Heirs, and Successors, or to any other person or persons in any wise, for, or upon any escapes, executions, or returns of Writs, Commissions, Privie Seals, Proclamations, Processe, Precepts, Seals, and Warrants, by any ways, manner, or means to, or upon the said *F.* for, upon, or under the said Office of Sheriff in any wise directed, named, or had for any Act, matter, default, office, or thing to be committed, done, neglected or suffered, perpetrated, or had by the said *A.* or any of his said servants, ministers, deputies, or assigns, during the time that the said *A.* shall continue in his said authority or Office, or any of them: *And* also the said *A.* in consideration aforesaid, doth by these presents grant, &c. that he the said *A.* shall duely, pay, enter into, make perfect, finish, acquit and discharge, for, and in the behalf of the said *F.* in the Kings Court, now commonly called the Exchequer, and elsewhere, all and singular, and all manner of profits, rents, dets, duties

Les Profits. *Le Gaole.* *De saver harmlesse.* *De faire ac compt.*

duties, and demands, accounts, costs, charges, fees, recognisances, and bonds, for and upon the said Sheriff, or any of his sureties, or by reason or means of the said Office of Sheriff, of, and in the said Counties of *Cam.* and *Hunt.* or of any Officer or minister of the said Sheriffs Office in any wise due or demandable, during the time that the said *F.* shall have the said Office of the said Sheriff of the said Counties of *C.* and *H.* or to be accountable thereof: *And* that the said *A.* shall duely, lawfully, and in convenient time, by himself, or his Assigns, bring unto the said *F.* his Heirs, Executors, or Administrators, his, and their lawfull acquitance and discharge for the accounts and duties of the said Sheriffs Office of the said Counties of *Cam.* and *Hunt.* for the time that the said *F.* shall have been Sheriff there by the said Letters Patents.

De procure son discharge.

Also the said *A. G.* doth by these presents grant to, and with the said *F.* that the said *A.* shall well, and worshipfully, make, provide, sustain, and maintain at all and singular times (during the time that the said *F.* shall have the said Office of Sheriff of the said County of *C.* and *H.* by force or, vertue of the said Letters Patents) convenient and competent Meat, Drink, Lodging, Food, Sustenance, and Entertainment for the Justices of Assises, Justices of Gaol Delivery, and the Clerk of the Assises, and for all and for every of their Clerks, Ministers, and Servants, and for the Horses of them and every of them, and for all other attendants at, and about the said Justices of Assise or Gaol Delivery, at, or within the said Counties of *Cam'* and *Hunt.* during the time and times of their Assise, at and by the oversight and appointment of the said *F.* or such other person or persons as the said *F.* shall thereunto nominate and assign.

De entertain les Judges, &c

Provided always, and it is granted and agreed by these presents between the said *F.* and *A.* that the said *A.* or any other person in his behalf shall not make or return any other other Pannel, Jury or Enquest, for, in, or upon any Writ of *Venire facias*, or of any other Processe pursued, directed, or had, during the time of the said Sheriff of the County of *Cam'* and *Hunt.* out of any of the Kings Majesties Courts, commonly called the Chancery, the Kings Bench, Common Place, or Eschequer, unlesse the same Pannel, Jury, or Enquest shall be confirmed with the hand of the said *F.* or some other party that he shall nominate or appoint.

Pur Retorne les Jurors, ove le privity del vic'.

Nor that he the said *A.* nor any other person in his behalf shall in any wise do, or cause to be done, without the special Licence of the said *F.* first obtained and plainly had done or appointed, any Act, matter, or any thing upon any Writ, Commission, Action, Presentment, Judgment, Indictment, Processe, or Sute that in any wise, manner, or means shall be, for, or against any of the Earls of, &c. or any of them, or, for, or against any other person or persons, that is, or hereafter shall be known or declared to the said *A.* by the said *P.* to be his friend.

Et executer proces, &c.

And it is also provided and agreed by these presents between the said *F. S.* and *A. G.* that the said *F.* shall, and may make, ordain, constitute, and appoint from time to time, during the time of his Office by the said Letters Patents, such persons which during that time shall have, occupy, and enjoy the two Baylywicks, and Officers of Bayliffs, of, and in the Hundreds of *R.* and *C.* and either of them, with the Appurtenances in the Counties of *Cam'* and *Hunt.* aforesaid, and that the same persons shall have, take, occupy and enjoy the said Baylywicks, and either of them, together with all, and singular manner of profits, commodities, and advantages, with the Appurtenances appendant to the same Bayliwicks, or either of them in any wise concerning, growing, belonging, or during the time, over and besides that shall be to the Kings Majesty, any thing in these presents contained to the contrary in any wise notwithstanding.

Lour Baylifes.

And the said *A.* doth moreover grant by these presents to the said *F.* that the said *A.* and his assigns shall

ſhall in due and conveninet time, as ſhortly and conveniently as may be after the time of the ſaid Office ended, account, and declare to the ſaid *F. S.* or his aſſigns, at the ſaid Mannor of, &c. the true value and Rent, of all and ſingular Rents, Revenues, Duties, and Forfeitures, due to be payed, and then levied or leviable to the Kings Majeſties uſe or behalf within the Counties of *C.* and *H.* for, upon, in, or by the ſaid Office of Sheriff there, during the time that the ſaid *F.* was, as is aforeſaid Sheriff there, and ſo much of the Rents Revenues, Duties, and Forfeitures that the ſaid *A.* or his Aſſigns ſhall pay, or cauſe to be paid then to the ſaid *F.* as the ſame *A.* or any other perſon to his uſe then hath received, and all the reſidue of the ſaid Rents, Revenues, Duties, and Forfeitures there, which conveniently ſhall be levied, the ſame ſhall cauſe to be payed to the ſaid *F.* or his Aſſigns ſo ſhortly and ſpeedily as may be, after that time they ſhall be conveniently levied and gathered there: *And* the ſaid *A*, doth by theſe preſents covenant and grant to, and with the ſaid *F.* &c. that he the ſaid *A.* his executors, and Aſſigns, ſhall within forty dayes next after the ſaid accounts for the ſaid Office of the Sheriff of the Counties of *C.* and *H.* finiſhed or determined, pay, or cauſe to be payed well and truly to the ſaid *F. S.* his Executors or Aſſigns, all manner of allowances, profits commodities, and advantages that in any wiſe ſhall be admitted, deducted, or allowed in the ſaid account or accounts, or by any part thereof in the ſaid Exchequer, for the diet of any the Juſtices of Aſſiſes or Gaol, or any of their Clerks ſervants or attendants in the ſaid County, or for any ſummons of *præcipe* or of any green wax, or of any ſuch like matter, or thing in the ſaid Shires of *C.* and *H.* *And* alſo the ſaid *A.* doth by theſe preſents grant to the ſaid *F.* that he the ſaid *A.* at leaſt in one day in every of one and twenty days, during the time that he ſhall be Under-ſheriff, as is aforeſaid, and perſonally be in or near unto the ſaid Counties of *C.* and *H.* ſhall come thence unto the ſaid *F.* and on that one day, utter and declare the ſtate of the ſaid Counties of *Cam'* and *Hunt.* and the affairs concerning the ſaid Office, with the Appurtenances thereof. *And* that alſo the ſaid *A.* with all his Officers and Miniſters, and power of the ſaid County, ſhall duely and diligently attend to the ſaid Office, in any War, Rebellion, or other notable matter or occaſion, during the time of the ſaid Office ſhall ariſe, or be in the ſaid County or thereabouts: *And* alſo that the ſaid *A.* ſhall well and diligently, honeſtly, and juſtly occupy, ſerve, and execute the ſaid Office of Under-ſheriff of the ſaid County, and honeſtly behave himſelf in all points, during all the time that the ſaid *F.* ſhall continue, and be High-ſheriff of the ſaid Counties of *C.* and *H.* by vertue of the ſaid Letters Patents, and nothing done by himſelf, or any other perſon or perſons in any wiſe concerning the ſaid Office of Sheriff or Under-ſheriff of the ſaid Counties of *C.* and *H.* which ſhall be to the prejudice of the ſaid *F.* *And* alſo that the alterations of matters, articles, and things in theſe preſents in any wiſe mentioned or contained, may, and ſhall be reformed, and had at any time from time to time, by the learned Counſel of the ſaid *F.* for the better and more perfect diſcharge and ſaving harmleſs of the ſaid *F.* his Heirs and executors by theſe preſents, by, and in all things to obey, perform, and fulfil. In witneſs whereof, &c.

De attend' le vic. chescun 3. ſemaine.

Poſſe Comitatus.

Bene ſe gerere.

Another form of an Identure of covenant, &c. See my other book, & hic fol. 209. & scribe hic.

Bonds: The Bonds are commonly taken of the Under-sheriff and his Sureties, for the performance of these former Covenants: And they are ordinarily as all other bonds are for the performance of Covenants: And they are in this manner following, or the like.

A Condition to perform Covenants.

THe condition, &c. That if the within bounden *T. F.* do well and truly hold, perform, observe, fulfill, and keep all and singular Covenants, Grants, Articles, Payments Provisos and agreements, which on the part and behalf of the said *T. F.* his Heirs, Executors, &c. or any of them are to be holden, performed, observed, fulfilled, or kept, contained, written, declared or specified in one pair of Indentures bearing date, &c. made between the said *T. F.* of the one party, And the within named *T. T.* of the other party, according to the tenure; purport true intent, and meaning of the said Indentures, That then, &c.

A Condition to passe an account, to procure a discharge for a Sheriff.

THe Condition of, &c. that if the above bounden *T. F.* his Heirs, Executors, and Administrators, do make a true and perfect account, of, and for the above-named *T. T.* his Heirs and Executors, in the Exchequer of our Soveraign Lord the King, and the Heirs and Successors of the said king, of, for and upon all issues, charges, sum and sums, which is or shall be charged or demanded, of, or upon the said *T.* as late Sheriff of the said County, and to get and procure a sufficient *quietus est* thereof, for the said *T. T.* his Heirs and Executors. And moreover, do well and truly discharge, save, and keep harmlesse the said *T. T.* his Heirs, &c. against our said Sovereign Lord his Heirs and Successors, and all other person and persons, of, for, and concerning the said Office of Sheriff, and all the receipts and charges thereof, That then, &c. W.Pl.215.

A Condition for a Bayliff to enter into, to the Sheriff.

THe Condition, &c. That whereas the above named Sir *B. T.* at the special instance and earnest intreaty of the above bounden *I. P.* hath authorised and appointed the said *I. P.* to be one of his Bayliffs within the County of *C.* abovesaid, and in more particular hath committed to his charge the Bayliwick of the hundred of *M.* and *B.* if therefore the said *I. P.* and all such persons, &c. for and about the executing of such things as shall be given him in charge to do and execute as Bayliff of the hundred, do justly, &c. Execute his said Office according to the effect and intents of such Warrants and Precepts as shall be directed unto him, and come to his hands from the above named Sheriff, or from his Undersheriff to be executed, and W.12.

shall

ſhall and do upon the view of every Warrant upon the mean proces from the ſaid Sheriff, take ſufficient bond with two ſureties for the appearance of the defendant arreſted, according to the Statute in that caſe made and provided. And ſhall ſafely convey and deliver every ſuch bond uncancelled unto the ſaid Sheriff or his Under-ſheriff, before ſuch time as the Proces whereupon the ſaid Warrants is made is returnable. *And* alſo at all times, and from time to time, during the continuance of the ſaid Sheriff in his Office of Sheriff of the ſaid County, be ready and attendant both upon the ſaid Sheriff, and upon his Under-ſheriff, as well at every Aſſiſes and Seſſions, as alſo at every County Court to be holden, &c. then and there to execute his ſaid Office as appertaineth; *And* alſo ſhall well and truly pay, or cauſe to be payed to the ſaid Sheriff or his Under-ſheriff, at the Feaſts of Eaſters, and ſaint *Michael* the Archangel now next comming after the date of theſe preſents, all and every ſuch Sum and Sums of mony as hath been accuſtomed yearly to be payed to the ſheriff of the ſaid County for the Kings Maieſty out of the ſaid hundreds upon the account of every Bayliff of the ſaid hundreds, commonly called, Sheriff Torne money: *And* do in like manner before the ſaid Feaſt of Saint *Michael*, collect and gather of the Inabitants within the ſaid hundreds, all ſums of mony due to his Majeſty, upon the Summons and Schedules of the green wax, a ſufficient Warrant being in convenient time delivered unto him, to that end and purpoſe, and do accordingly pay the ſame to the ſaid Sheriff, or to his Under-ſheriff, within one moneth next after he hath gathered and collected the ſame, without convin or further delay. *Sheriffs Tornemoney.*

Un auter President del grant del Office de South vic' de avoid le danger, ore, de perjury, &c.

THis Indenture made, &c. Between *I. S.* Sheriff of the County of *C.* &c. of the one part, And *B. C.* &c. of the other part, witneſſeth that the ſaid *I. S.* upon the ſpecial affiance, truſt and confidence that he hath in the ſaid *B. C.* And of his faithfnl circumſpection, care and due obſervance hereafter to be ſhewed and beſtowed to me, in the Office and place of High Sheriff of the county of *G.* for and during all the time that *I* the ſaid *I. S.* ſhall be in the ſaid Office, Do by theſe preſents ordain, conſtitute, &c. as is fol 531. And profits lawfully to the Office or place of Under-ſheriff belonging or appertaining, ib. In conſideration whereof the ſaid *A. B.* doth by theſe preſents, for himſelf, his Heirs, Executors and Adminiſtrators, covenant and grant to and with the ſaid *I. S.* his Heirs, Executors, &c. That he the ſaid *A. B.* and his Aſſigns ſhall, &c.

1. Save the ſaid High-ſheriff, &c. harmleſs. } Ut hic fol. 529. 530.
2. To make Account in the Exchequer } 531 532.
   And procure the High Sheriffs diſcharge }

3. To return Juries, with the privity of the Sheriff. Ut f. 532

4. To execute no proces, &c. of weight, ſc. without the Sheriffs privity. } fol. 532

Mes advise de ceste Covenant.

5. To Accompt to the Sheriff, And to attend the Sheriff. } 531. 533.

6. To be ready to ayd the Sheriff, &c.
7. For his good behaviour, in his Office. } fol. 533.

8. To take or use no extortion.
9. To give attendance at the Kings Courts. } fol. 530.

Another Condition to exercise a Bailiwick.

THe condition, &c. That if the within bounden *I. A.* shall well and truly exercise and occupie the Office of the Bailiwick of the Hundred of Ch. under the within named *E. T.* being Sheriff of the said County of Cambridge, and be ready and attendant to the said Sheriff and his Deputy, at all times when he shall be required in executing his said Office of Sheriffwick, and discharge, and save harmlesse the said Sheriff against our Soveraign, &c. and all other persons for executing of all manner of Processe, Precepts, Warrants, and commandments, to be directed, executed, and done by the said *I.* and of all prisoners as shall be in his custody: *And* well and truly content and pay to the same Sheriff, his Executors or Assigns, all the issues, revenues, and profits of the said Hundred, whereof the certainties amount to the sum of four pounds, by the confession of the said Bailiff, to be paid duly at the Feast of Easter, &c. And also levie, content, and pay to the said Sheriff, all such green wax, pipe silver, and issues, as the said Sheriff shall be charged withall within the said Hundred, and shall be estreated out to the said Bayliff to gather, to be paid the said Sheriff before the said Feast of, &c. That then, &c. W.Pl.227 *Issues, &c. del hundred*

A condition for a Gaoler to enter into for the safe keeping of his Prisoners.

THe Condition, &c. That whereas the within named Sir H.W. at the special instance and request of the within bounden W. W. hath constituted and appointed the said W.W. to be his Keeper of all such prisoners as shall be arrested or attached by any manner of Writ, Warrant, or Precept made, or to be made, by, or in the name of the said Sir H. W. or by or in the name of I. W. his Under-sheriff; If therefore the said W. W. his Deputie or Deputies, Assignee or Assignees, or any of them shall and do well and safely keep all such prisoners as shall be committed to him or them, or any of them, and therein shall save and keep harmless and indempnified the said Sheriff, his Heirs, Executors, and Administrators at all and every time and times hereafter, of, and from all, and all manner of escapes, of all manner of prisoners that shall be committed to the custody and safe keeping of the said W. W. or left under the custody or charge of any of his Deputies or Assignes: And of and from all, and all manner of judgments, executions, fines, charges troubles, and incumbrances whatsoever which shall or may hereafter grow or happen to be taxed, imposed, estreated or levied upon, of or against the said Sheriff, as Sheriff of the County aforesaid, for and by reason

son of any such escape or escapes as aforesaid: And also if the said W. W. his Deputie or Assignee shall not discharge or set at libertie out of his or their custody and safe keeping, any prisoner or prisoners which now are, or that hereafter shall or may be by the said Sheriff or by his Under-sheriff or Deputy, or by any of their Bailiffs, taken, committed, delivered, or left, in the custody of the said W. W. his Deputie or Servant, without the special warrant in writing under the hand and seal of the Officer of the said Sheriff in that behalf first had and obtained, that then, &c.

Concerning these or the like Bonds to be taken by the sheriff or his Officers, See hic ante cap.

27 El. c. 12. P. Sheriffs 32. 33. Every Under-sheriff before he intermeddle with the use or exercise of the said Office, and all & every Bailiff of Franchise, Deputie, and Clerk of every Sheriff, and Under-sheriff, and all and every Bailiff of Hundred, and every other person and persons which shall have authority, or take upon him to impannel or return any Enquest, Jury, or Tales, or to intermeddle with the Execution of proces, in or out of any Court of Record, before he or they intermeddle with execution thereof, shall receive and take two corporal oaths upon the holie Evangelist, The one for and concerning the Kings supremacy, in such manner as is expressed by the statutes made 1 Eliz. cap. 1. & 5. Eliz. cap. 1. And shall also within 3. months after the taking upon them their office, take the Oaths and Test appointed in a late Statute made in the Reign of King Charles the second. *Le serement.*

The other oath, for and concerning the true exercising of their Office, the form whereof is as alloweth.

I *Henry Sl.* shall not use or exercise the Office of Under-sheriff (Bailiff, Deputie, or Clerk, or other such words convenient for the office, or place in which the partie which taketh the oath is to be exercised in) corruptly during the time that I shall remain therein, Neither shall or will accept, receive, or take, by any colour, means, or devise whatsoever, or consent to the taking of any manner of fee, or reward, of any person or persons, for the impannelling or returning of any Enquest, Jury, or Tales, in any Court of Record, for the King, or betwixt party and party, above two shillings, or the value thereof, or such fees as are allowed and appointed for the same by the Laws and Statutes of this Realm, But will according to my power truely and indifferently with convenient speed impannel all Jurors, and return all such Writ or Writs, touching the same, as shall appertain to be done by my duty or office, during the time that I shall remain in the said office, So help me God. *Le serement concernant l'office.*

27 El. c. 12. These oaths are (by the said Under-sheriff, Bailiffs, and other Officers) to be taken before the Justices of Assise, or one of them, of the same circuit, or before the Custos Rotulorum, or two Justices of the Peace (one of them being of the Quorum) of the same Countie whereof the said Under-sheriff, Bailiff, or other Officer shall be. The other Oath & Test must be taken only in the Courts of Chancery and Kings Bench in Terme time, and at the Quarter Sessions of the Peace, and not elsewhere.

27 El. c. 12. If any of the said persons limited to take the Oath aforesaid, do take upon him to impannel, or return any Enquest Jury, or Tales, or to intermeddle with the execution of Proces, not having before taken the oaths aforesaid, every such person shall forfeit fortie pounds, the one moitie to the King, the other moitie to him that will sue for the same.

27 El. c. 12. If any Under-sheriff, or other person here above mentioned in this

this Act, shall do or commit any act or acts contrary to the oaths aforesaid, or either of them, or contrary to the true intent and meaning of this Act, every such person so offending shall forfeit for every such offence to the party or parties grieved, his, or their treble damages.

All the several forfeitures before-mentioned, shall or may be recovered in any of the Kings Courts of Record by action of debt, bill, plaint, or information, in which sute no wager of Law, Essoin, or Protection shall be allowed. 27 El. 12.

Also the Judges of Assise, and Justices of Peace in their open Sessions, may hear and determine the offences aforesaid, upon presentment, information, or indictment, and upon conviction of the offenders may award execution (for to levy the forfeitures) by Fieri facias, Attachment, Capias, or Exigent. 27 El. 12.

Also the Head-officer of the place, if it be a Town-corporate, wherein such Bailiff, or other Under-officer shall be, may take the said Oaths of such officers, before they shall, or may exercise their said offices. 27 El. 12.

Oath of Allegiance. Also by the Statute made 7 Jac. Regis c. 6. every Officer or Minister of Justice (within which words the Under-sheriff, Bailiff, Sheriffs Clerk, and Deputies seem to be comprehended) is to take the Oath of Allegiance, if they be of the age of 18. years or above, and that it be lawfully tendered to them. 7 Jac. 6.

Pur collecter le shire amercements. Bailiffs and others the Sheriffs Officers shall be sworn by the Justices of Peace, that they shall gather no more of the Shire Amercements then is forfeited, and contained in their estreats sealed by the said Justices. See hic antea tit. County Court fol. 11 H. 7. c. 12.

Ne serra Atturney. No Under-sheriff, Sheriffs-clerk, Sheriffs-receiver, nor Sheriffs-bailiff, shall be Attorney in any of the Kings Courts during the time that he is in any such Office with any Sheriff; And the Sheriff is bound to have a care hereof, and to prevent the same, as well by the Statute as by his oath. 1 H. 5. c. 4.

Not above one year. No Under-sheriff, nor Sheriffs-clerk shall abide or tarry in his Office above one year (except the Under-sheriff, and Officers within London, &c. See infra) upon pain to forfeit two hundred pounds yearly, as long as such person shall occupy such office contrary to the effect of the said Statute; and every man which will may sue for the same. See hic antea fol. 42 E. 3. c. 9. 23 H. 6. c. 8. 6 H. 8. 18.

Also every pardon made for such offence shall be void; besides the High-sheriffs Oath seemeth to bind him from having such an Under-sheriff.

The mischief The mischief of such Officers continuing long in their Office, or interchanging out of one of the Offices into another, is observed (in the Preamble of another Statute made 1 H. 5. c. 4.) to be, that the Kings Liege-people durst not complain of the Extortions, and oppressions done to them by the Sheriffs-officers (that is to say by Under-sheriffs, Sheriffs-clerks, Bailiffs, and Receivers) by reason thereof; and therefore it was by that Statute ordained, That Sheriffs-bailiffs should not be in any such Office by the space of 3. years next following: But quære for the use thereof; for at this day in most places Sheriffs-bailiffs do continue in their said Offices from year to year, for divers years together: And also Under-sheriffs and Sheriffs-clerks in many places also do continue in their said Offices many years together, interchanging from the one into the other; By reason of which continual being, & continuing in the said Offices, the Under-sheriffs, Sheriffs-clerks, and Bailiffs, grow so cunning in their several places, as 1 H. 5. c. 4.

Bailiffs ne serra deins 3. ans.

that

that they are able to deceive, and may well be feared that many of them do deceive both the King, their High-Sheriff, and Countrey.

23 H.6.c.8. 1 H.3.c.18. And yet the Under-sheriff, and all other Officers within the City of London, as also the Under-sheriff, and all other Officers of Sheriffs, within the Shire or County of the Town of Bristow, may continue and occupy their said offices from year to year, without any danger or forfeiture, notwithstanding the former Statutes of 42 E.3.9. and 13 H.6.8.

23 H.6.c.8. Also such Counties in which any persons were inheritable to the Office of Sheriff at the time of the making of the said Statute of 23 H. 6. (viz. 25. Febr. Anno Domini 1444.) And all Letters Patents before the time made to them of the office of Sheriff, Under-sheriff, and Sheriffs Clerk, are excepted out of the said Statutes.

5 E.4.3. Br. Officer 24 & 23. Note, that the act or deed of the Under-sheriff, or his Deputy, in the name of the Sheriff, shall charge the Sheriff; and for their act the Shereff himself shall be amerced and none other. 8 H.4. 20. Accordant. See hic antea fol. 69. 70. *Vic' amerce pur default ses officers.*

Marsh *port action sur le case vers* Astry le South vic. de Hereford, *&* *count* quod cum ipse *avoit prosecute un briefe de Entree en le post vers un C. direct al vic. de* Hertf. *que il luy Summoner d'appear devant les Justices, &c. Et que il deliver le dit briefe al dit Astry, & done a luy ij. s. pur ceo Executer, & licet le dit Astry voit Summon le dit. C. uncore il ne retorne le briefe avantdit al damage le Plt. de xij. Le deff. plede Rien Culp. & fuit trove encounter luy, per que* Coke *en arrest de Judgment alledge que l'action serra port envers le High-sheriff, & nemy vers le South vic. & pur ceo il vouch.* 21 E. 3. 43. & 19 H. 6. *que l'action serre port vers la vic. que ne Retorne le briefe, &c. Issint que per Nonfesans d'un chose le Haut vic serra puny, Et le South. vic. pur missesance. Mes Gawdy & Clinch contra car l'action est port pur le fauxity que est solement le act del South. vic. intant que il prist largent & ne retorne le briefe. Et auxi le South. vic. est ore Officer in Court entant que il est Iurus. Et Clinch dit, si un Clerke misenter un Roll ou Record, le Cheiffe Clerk ne serra puny pur ceo, Issint le Haut Steward ne serra puny pur le misdemeanour ou male fesans del South Steward.* H. 32. Eliz.

14 E.3 c.10 Co. 4.34. And for the Bailiffs, it is parcel of the Sheriffs Oath to take no Bailiff, but such as he will answer for. And so for the Goalers or Keepers of the common Goal and Prison of the County, the Sheriffs must put in such Goalers or Keepers for whom they will answer; for if there be an escape of a Felon voluntarily suffered by the Goaler, the Sheriff may be indicted of Felony for the same as it semeth. And if an escape shall be suffered by the Goaler, or other Officer, of a Prisoner who is in upon an Execution, the Sheriff shall be charged for the whole Debt.

Lam.v.v.5 & West. M.1.

The Under-sheriff.

Co.9.49. The Under-sheriff in ancient time was called Seneschallus vicecomitis, and in the statute of Westminster 2. cap. 39. is first called Under-sheriff, and in the statute of 11 H. 7. cap. 15. he is called Under-sheriff, or the Shire-Clerk, or the Clerk of the County. Co. 9. 49. see hic cap. 1. & Minsh. verbo Shire-Clerk.

And yet the word Shire-clerk is sometimes taken to be the Under-sheriff; and sometimes it is used for a Clerk in the County Court, Deputy to the Under-sheriff.

These Under-sheriffs have at this day to them committed by the High-sheriff the whole, or most part of the exercising and executing of the office of the High-sheriff, and may be called the Sheriffs general Deputy, (sc. in matters concerning their ministerial office.)

office.) And accordingly by the Book 20 H.7. the Under-sheriff is said to be but the High-sheriffs Deputy or Bailiff, and one that useth and occupieth the place or office in the right of the High-sheriff, and doth all things in the name of the High-sheriff. 20 H.7.fol. 12.b.

If it shall come in issue whether he that made the array be Under-sheriff or not, this shall be tried by the Country, and not by examination of the Officer, and the array impannelled and returned by the Under-sheriff in the name of the Sheriff shall bind the Sheriff. 8 H.4: 10. 20. Br.Officer 33.

And if a Return made by the Under-sheriff be denied, that shall be tried by the Under-sheriff, and the High-sheriff cannot disavow the same, if he confess him to be his Under-sheriff. Co. 9.31.

If any Under-sheriff make a Retorn whereupon the Sheriff shall be amerced, there the High-sheriff shall be amerced, for the Retorn is made expressly in his name. But if it be a false Retorn whereupon an action of deceit lieth, in that case it may be brought against the Under-sheriff. Dr. & St. 134.

The substance of this Oath, is, for the true, speedy, and indifferent returning of Writs, and Impannelling of Juries, without taking above the Fees allowed.

Their Deputies.

In Courts al Westm. Every Sheriff shall yearly make a Deputy of Record in every of the Kings Courts, of his Chancery, the Kings Bench, the Common Place, and in the Exchequer (before that they shall Return any Writs) to receive all manner of Writs and Warrants to be delivered them. See hic antea fol. 23H.6.c.10

These Writs (as it seemeth) are delivered of Record in Court, to the Sheriffs Deputy, and thereupon an Entree is made thereof in this manner: Memd' quod Justic. Dñi Regis hic, tali die, isto eodem termino deliberaverunt *J. D.* deputat. vic. Com. præd. quoddam breve Dñi Regis nunc clausum eidem vic. direct. in forma juris exequend. Quod quidem bre. idem Deputat' hic in Curia aperuit, Cujus quidem brevis tenor sequitur in hæc verba. *Carolus, &c.*

Every Sheriff of the twelve Counties in Wales, and of the Counties of Lancaster, Chester, and the City of Chester, shall have a sufficient Deputy in the Kings Bench and Common Pleas, to return all Writs directed to such Sheriff. 1 E.c.6.10. 5E.6.c.26.

The Bishop of Durham, and during the vacation of the said Bishoprick, the Chancellor of the said County Palatine for the time being, shall have one sufficient Deputy at the least, in the said Courts of the Kings Bench and Common Place, to receive all Writs of Proclamation directed to such Bishop or Chancellor. 31 El.c.9.

Every Sheriff, as also the Bishop or Chancellor of Durham making default herein, shall lose to the party indammaged treble damages, and besides shall forfeit forty pound, the one half to the King, and the other moiety to him that will sue for the same. 23H.6.c.10 2E.6.c.10. 5 E. 6.26. 31 El.9.

Every Sheriff of any Shire (being no City, nor Town made Shire) at his first County-day, or within two months next after he hath received his Patent of his Office of Sheriffwick, shall depute, appoint, and proclaim in the Shire-town within his Bailywick, four Deputies at the least, dwelling not above twelve miles one distant from another (within the County where he is Sheriff) upon pain that every Sheriff for every month that he shall lack such Deputy or Deputies, shall forfeit for every such offence 5. l. 1 & 2 Ph.& Ma.c.12. *4. Deputies pour faire Replevies.*

Every of the said Deputies so appointed, and proclaimed, may 1 & 2 Ph.& Ma.c.12.

in

in the Sheriffs name make Replevies, and deliverance of distresses, in such form and manner as the Sheriff may, and ought to do.

22. H. 7. f. 37. The Sheriff may make his Undersheriff, Bailiff, and Deputies without any deed or writing, by Conesby, Brudnell, and Tremaile. *Sans fait.*

Where the Sheriff cannot make a Deputy: See hic.

CAP. 116.

Their Bayliffs of Hundreds.

THe Bayliffs of Hundreds, called also Bayliffs Errants, and in our Law, or vulgar Latin called Ballivi Itinerantes (id est going hither and thither in the County to serve or execute Writs, to summon the Assises, the Quarter Sessions, and the like) are made and appointed by the high Sheriff.

And these Bayliffs should be such manner of persons, as do know each mans person, and Land, in the hundred, and their ability to serve upon Enquests, that so they may the better summon, or distrein them to appear, &c. when they shall be appointed.

But for that Sheriffs may not let their Baylíwicks to farme, therefore when they put in Bayliffs they be but as under bayliffs to the King, and the Sheriff is the high Bayliff, and the other the Sheriffs servants, and therefore he shall answer for them if they offend in their Office. Dr. & St. 136.

14 E. 3. c. 9. Sheriffs shall appoint such Bailiffs for whom they will answer. Vide hic. And for that the Statute is general, it seemeth that he shall answer as well for an untruth in any such Bayliff, as for an oversight. Dr. & St. fol. 135. *Bailiffs.*

And so shall those Lords which have Hundreds and Wapentakes in Fee.

No Sheriffs Bayliffs shall be Atturney in any the Kings Courts during the time he is in such Office. Vide hic.

27 Eli. c. 12. The Sheriffs Bayliffs are to take the Oaths appointed by the statute of 27 Eliz. sc. they are to be sworn to the supremacy, and for the exercising of their Office. sub pæna. 40. l.

And if they shall commit any act contrary to their said Oaths, they shall loose treble damages, &c.

The form of this last Oath. See hic. cap.

But special Bayliffs to serve Process, are not to take the same Oaths by force of the said statute of 27. Eliz. Cromp. 76.

1. H. 5. c. 4. Sheriffs Clerks nor Bayliffs being in one year shall not be in any such Office by the space of three years after, or next ensuing (except the Bayliffs of those Sheriffs which have inheritance in their Sheriffwicks) quære for the use hereof at this day.

14. E. 3. c. 9. The Sheriff shall have in his County but one Bayliff errant only: See the statute of 14 Ed. 3. 9. and quære of the validity of this statute this day. For these bayliffs errants, called in our Law or vulgar Latin Ballivi Itinerantes, (id est going hither and thither in the County to serve Writs, and such like) are the bailiffs of the Hundred; and are made, and appointed by the Sheriff.

These Bailiffs of Hundreds shall be true and credible persons, and shall have sufficient Lands in the same Shire whereof to answer the King and his people, in case that any man shall complain

 against

against them, and so that they shall not need to use extortion. 9.Ed.2.Lincoln.& 2.Ed.3.cap.4. 4.Ed.3.cap.9. 5.Ed.3.cap.4.& 14.Ed.3. cap.9.

If the Sheriff shall chuse any man to be his Bailiff of any Hundred or Wapentake, who hath not sufficient Lands in the same County (according to the statutes of Westm. and of 4.& 5.Ed.3.) a writ shall be sent unto the sheriff, commanding him to discharge and remove such bailiff, and to chuse a new bailiff in the others room; and hereupon any man may have an Alias, Pluries, and an Attachment against the Sheriff, if he shall not do according as he was commanded by such writ: The form of which writ you may see in Fitz. Na. Br. 164. & Register. fol.178. So as upon such a writ the Sheriff may remove his bailiffs of Hundreds which have not Lands or Tenements sufficient within his County. Register 178. Fitz. 164.b.

Note also that it is parcel of the Sheriffs oath, to take no bailiffs but such as be true men, and of sufficient estate, and such as he will answer for, and to make them to take their oath for the due execution of their Office.

And these bailiffs should also be such, as do know each mans person, and land, in the Hundred, and their ability to serve upon enquests; That so they may the better summon, or distrein them, &c. to appear when they shall be appointed.

Counties and Hundreds let to farm.

It seemeth that in ancient time all the * Counties in England were assessed to a certain farm (sc. were let by the King to every Sheriff at a certain farm) and then all the hundreds and wapentakes in the Sheriffs hands were again by them letten, and were also rated to their farm, which was an occasion of great oppression; whereupon it was first ordained, that the bailiwicks of Hundreds should be leased and bailed by the Sheriff for a reasonable Rent, so that the bailiff need not to use extortion upon the people by reason of too outragious farm: and after by the statute made 4.E.3. cap.15. it was ordained, that Sheriffs should let their Hundreds, for the old farm (and not above) to their bayliffs; and by another statute made 14.E.3. it was shortly after ordained, that Sheriffs should keep their Hundreds in their own hands, or else should let them upon the old Rent; But sithence Sheriffs (by the statutes made 23.H.6.cap.10.& 5.& 6.Ed.6.cap.16. as also by their Oaths) are restrained from letting to farm any of their Counties, or any of their Bailiwicks, Hundreds, or Wapentakes in any manner whatsoever.

* Sez. the profits thereof. 2 E.3.c.12. 9 E.2.Stat. de vic'4E. 3.15. 14E.3 c.9.

No bailiff of any Hundred shall lease his Office to any other in farm or otherwise. Stat. de vic' 9 E.3.

The Execution of all writs which come to the Sheriff shall be done by the Hundredors; sc. by the bailiffs of hundreds, and such as are known and sworn in the full Counties, and not by others; if it be not by the open default or notorious disturbance of the Hundredors, sc. unless the bailiffs of Hundreds will not, or cannot execute them. And then execution shall be done by other persons meet and sworn, see the statute 9 Ed.2. de vicecomitibus.

No distress shall be taken, but by a Bayliff sworn and known; And if any other shall distrain and be thereof convicted, they shall yield dammages to the party grieved, and also be punished to the King. 13 E.1.73.

And so by the statute 27 Eliz.cap. 12. No bailiff of any Hundred, nor other person shall take upon them to execute any Process, &c. before they be sworn, see hic antea. fol.

And yet the common experience and practice at this day is, that special

special Bailiffs, or other persons (being neither sworn nor known officers) do execute such writs; And such special Bailiffs are often mentioned in our Books, as in 8 Ed.4.14. 21 H.7.37. Co.9.69. Br. *Monstrans des faits* 117. And they seem to be the more allowed, for that they many times may and do execute the Kings Process, when such Bailifs as are known, cannot, in regard that such as are in debt do usually flie from them, &c.

Bailiffs of hundreds shall attend upon the Justices of Assises, Justices of Goal delivery, and Justices of Peace in every of their Courts and Sessions, (upon warning) See the Statutes 27 H.8. 24. & 34.H.8.26. They shall also duely execute all precepts and warrants to them from the said Justices directed for the ministration of Justice.

See more concerning Bailiffs of Hundreds hic antea tit. County Court.

Bailiffs of Fee.

2 E.3.c.4. Sheriffs, and Bailiffs of Fee, shall cause their Counties, and Baliwicks to be kept, by such as have lands therein.

Bailiffs of Fee, are Officers of Fee within their jurisdiction or precinct; And for the execution of proces there, the Sheriff shall not write or send his precept, to these Bailiffs, as to the Baliff of a Franchise, but as to the Bailiff of guildable; and the Sheriff shall return his answer, as if the Sheriff himself had served the proces, 27. Ass. Br. Proces 98. and the Return also shall be in the name of the Sheriff.

CAP. 117.

Bayliffs of Franchises.

BAiliffs of Franchises or Liberties, are those that be appointed by Lords within their Liberties, to do such Offices within the Precincts of such Lordships or liberties, as the Bailiffs Errants do at large abroad within the County.

These Bailiffs of Franchises which have Retorn of Writs, can not arrest a man without a Warrant or Precept to them made by the Sheriff, upon or by force of the Kings Writ in the hands of the Sheriff. Kiel. fol. 86.

Bailiffs of Franchises. Low serement.

All Bailiffs of Franchises and Liberties, before they intermeddle with the execution of their Office shall take two corporal Oaths, the one concerning the supremacy, the other for the true exercising of their Office sub pœna 40. l. See hic antea.

A Bailiff of a Franchise or Liberty is an Officer by himself, and hath not to do with the Sheriff, 21 H. 7. fol. 23. a.

And yet it is a principal part of his Office, duely to execute all Precepts directed to him from the Sheriff; And to make due return thereof to the Sheriff. Cromp. 57.

And if the Bailiff of a Franchise, upon the Sheriffs warrant, shall arrest a man, and shall not return the warrant to the Sheriff, the party arrested may have his action of *faux imprisonment* against the Sheriff. But if the Bailiff shall make his Retorn to the Sheriff, that he hath arrested the party, and hath delivered him to the Sheriff, and then the Sheriff will not return the Capias to the Court, here no action of false imprisonment will ly e against the Bailiff of the Franchise, for that he hath executed his warrant and Office well; And the Bailiff of the Franchise is to make his return to the Sheriff, and not into the Court. Kiel. 87. Vide hic. cap. 37.

Bailiffs of Liberties, may bail such manner of persons being in

Poit bailer. in their custody, as sheriffs may; And they may take the like obligations for the appearance of such persons by them to be bailed. 23 H.6.c. 10.

If the Bailiff of a Franchise shall arrest one by a warrant upon a *Capias* to him directed from the Sheriff, yet the obligation (taken for the appearance of the party) must be made to the sheriff, and taken by the bailiff in the sheriffs name. 23 H.6.c.10.

Ne sera attorney. No Steward, Bailiff, nor Minister of Lords of Franchises which have return of writs, shall be Atturny in any Plea, within the same Franchise or Bailiwick whereof he is or shall be Minister or Officer. 4 H.4.19.

Stewards and Bailiffs of Franchises, and their Deputies and Clerks, may keep and enjoy their said offices for so long time as the same is or shall be given unto them. 27 H.8.24.

Lour fees. Bailiffs of liberties shall take such fees, as the statutes have set down for the Sheriffs and their officers; which see *hic postea*. 23 H.6 c. 10.

Lour fees. All other statutes made before the 4. *Februari Ann.* 27.H.8. for or concerning sheriffs, or their undersheriffs, bailiffs or other Ministers (for making or returning any Juries, serving of any proces, taking of fees, for extortions, or for any other thing concerning their offices) And all pains and penalties in every such statute contained shall be in force against, and extend to, all stewards, bailiffs, and other ministers and officers of liberties and franchises, having returns of writs and executions thereof; in like manner as they extend to Sheriffs, undersheriffs, &c. As if the said stewards, and bailiffs of liberties, &c. had been particularly named in such statute, saving that the said stewards, bailiffs of franchises, their deputies or clerks, may occupy their offices above one year, *viz.* for so long time as they be given to them. 27 H.8.24.

Fines and amerciaments for insufficient returns (of writs, and other proces) made by the stewards, or bailiffs of liberties, shall be set upon the heads of such stewards, or bailiffs, and not upon the Sheriff. Ibid.

The King shall have all manner of fines, issues, amerciaments, and forfeitures, that shall be forfeit by any stewards, bailiffs, or other minister or officer of any liberty, for non execution or misexecution of any writ, warrant, or proces to them directed; or for insufficient returns thereof, or for any contempt or other misdemeanour whatsoever concerning their offices, in and for the due execution or administration of Justice: *P. Prer.* 20. Ibid.

Attender les Judges, &c. All bailiffs and officers of liberties (which in time passed have used or ought to attend) shall attend upon the Justices of Assise, Justices of Goal delivery, and Justices of Peace, of the same shire wherein such liberties and franchises be; And shall make due execution of all proces to them directed for ministration of Justice within such liberty. 27H.8.24.

All Lords that have Franchises, or their Bailiffs, shall attend upon the Justices of Assise and Goal delivery, upon pain of forfeiture of their Franchises. 20 E.4.fol.6.Br.Forfeiture 115.

Also all such bailiffs (or their deputies) shall attend and assist the Sheriff, together with the Sheriffs Bailiffs, at all Courts of Goal delivery from time to time, for execution of prisoners according to Justice. 27 H.8.c. 24.

Provided that the Officers of Cities, Boroughs, and Towns Corporate, having Priviledges not to attend or appear out of their City or Town, shall not attend elsewhere, but shall enjoy their Liberties and Priviledges. Ibid.

Note, that such Liberties, Franchises, Priviledges, and temporal

ral

ral Jurisdictions, as came to the King by suppression of the houses of Religion, and by their grant, And also such as come to the King by Attainder of Treason, shall be revived in the King; And the officers thereof shall be personally attendant to the Kings Courts, and shall serve, execute and return all Proces, Precepts, and Warrants, as they ought to have done before they came to the Kings hands. 32 H.8.cap 20.

4 E.3 9. 5 E.3 4. Bailiffs of Liberties shall have sufficient Lands in the places where they be ministers, and in the same County, whereof to answer the King, and his people, if any will complain against them. *Lour sufficiency.*

Restist.178 If the Lord of a Liberty shall choose any man to be Bailiff of his Liberty, who hath not sufficient lands within the same County, then a writ shall be sent to the sheriff (of the same County wherein such Liberty is) commanding him to discharge or remove such Bailiff, and to choose another Bailiff in his place: Fitz. 164. 4.

And an Alias, Pluries, and an Attachment, lyeth against the Sheriff, if he shall not do according as he was commanded by such a writ.

12 E.2.c.5. Bailiffs of Liberties have full power to return the Kings Writs: And every return of any Writ to be made by any Bailiff of any Franchises or Liberty, shall be delivered to the Sheriff, by such Bailiff of Liberty, by Indentures to be made between the Bailiff of the Franchise, by his proper name; and the Sheriff by his proper name: And if any Sheriff shall change the return so delivered him by Indenture, and be thereof convict (at the sute of the Lord of the Franchise, and at the sute of the party indammaged, &c.) he shall be punished by the King, for his false return, and yield unto the Lord, and to the party double damages, Vide M.15. c.3.Abr.dass.132. *Return of writs, by Ind.*

12 E.2.c.5. And the Sheriff ought not to make any other Return, but according to that which the Bailiff of the Liberty shall certifie him. Kiel. 89.

Bailiffs of Liberties, that receive the Kings writs, returnable in his Court, shall put their own names to their return; So that the Court may know of whom they take such return, if need be: And if any bailiff leave out his name in his return, he shall be grievously amerced to the Kings use: see hic antea, Return of Writs. *Mitter lour nosmes.*

2 H.5. c.8. 15 H.6.c.5. Amerciaments for insufficient returns of writs, or other proces, made by stewards, or bailiffs of Liberties, having return of writs, and execution of the same, shall be set upon the heads of such stewards or bailiffs, and not upon the Sheriff: 27 H.8. c.24. *Amerc[illegible]*

8 H.6.c.5. Bailiffs of Liberties shall impannel and return upon Enquests, sufficient persons, and such as be dwelling within their bailiwicks, &c. in cases of Atteints and Riots. *Return Enquests.*

Where a Precept is made to the Sheriff by the Justices of Peace, to return a Jury to enquire of a forcible Entree, and the Sheriff direct his Precept to the Bailiff of a Liberty to return the Jury, for this, For that the force is made within the Liberty; Now the Bailiff of the Liberty ought to make a due return and execution of the Precept to him directed (scz. the Bailiff ought to return upon every Juror twenty shillings in Issues at the first day, &c. and that every Juror within his Liberty, who is to enquire of such Forcible Entree, may spend forty shillings per annum) upon pain of twenty pound for every default.

23 H.6.c. 10. Bailiffs of Liberties, shall return none of the Sheriffs Officers; nor any of their Servants, upon Enquests.

But

Fitz.Chal. 2. But where the Bailiff of the Liberty is party to the sute, he shall not return the Jury, or pass the pannel of the Array.

1 E 3.c.5. 13 E.1.c.39. A man may aver against the false returns of Bailiffs of Liberties; And shall recover as well against them, as against the Sheriff, of too little issues returned, as in other cases: And therefore upon a writ of Distress directed to the Sheriff to distrain the Defendant in the same writ, or the Jurors of any enquest, if the Sheriff thereupon shall make his precept to the Bailiff of the Liberty, the Bailiff ought to return good and sufficient issues upon the Defendant or upon the Jurors, if they have sufficient Lands or Tenements within his bailywick; otherwise the Plantiff in the Action shall have an averment against this return of the Bailiff, scz. that the Bailiff might have returned greater issues, if the Defendant maketh default, or the Jurors: Cromp. 215. *Averment.*

Where the Sheriff may, and ought for to enter a Liberty, or Franchise, &c. Scribe hic *Cap.* 40. *all this Chapter.*

Sometimes the Sheriff ex Officio, and without any writ (of Non Omittas propter libertatem) may enter the Franchise, and Execute his Office, &c. As if, &c.

52 H.3.c. 21. 3 E.1.c 17. P. Sheriffs 28. If any mans beast, or other goods be distreined or taken, and with-holden or impounded, if they were taken within any Liberty, the Bailiff of the Liberty is to make Replevin and to deliver them; But if the Bailiff of the Liberty (after complaint to him made, &c. or after the Sheriff hath made the Return of the Kings writ unto him) will not, or do not deliver them (or cause them to be forthwith delivered) then the Sheriff himself, for default of such Bailiff, shall presently enter into the Liberty, and shall deliver them, or cause them to be delivered without delay, upon pain of forfeiture of double damages; And this is by force of the statutes made 52 H.3.c.21. & 3 E.1.c.17. see the Register fol. 81. b. & Fitz.N.B.fol.68.f.& *vid* N. bre. 44. *Vic' poit enter Franchise.* *In default del bailiffe.*

Fitz.68.1. If upon a Replevin, sicut Alias, or Pluries, the Sheriff shall Return, that he hath commanded the Bailiff of the Franchise, &c. who hath made no Return to him, or who will make no deliverance, &c. it seemeth that these are no good Returns, for that by the statutes of Marlebr. 21. & Westm. 1. 3 Ed. 17. 3. the Sheriff (upon such default, or Return made to him by the Bailiff) ought presently to enter into the Franchise, and to make deliverance of

Fitz. 68.f. the goods taken, &c. And so if a Plea of Withernam be in the County by Plaint before the Sheriff, and the Sheriff commands (or sends his precept to) the Bailiff of the Franchise to make deliverance, &c. and the Bailiff doth nothing, then the Sheriff, or his Officer ex Officio may enter into the Franchise and make deliverance, without any writ of Non Omittas, &c. directed in such case. Et hoc vicecomiti ex necessitate Conceditur.

11 H.4 fol. 6.94. Br.Offic' 34. In a writ of Redisseisin, and in a writ to enquire of waste, the Sheriff is both Judge and Officer, and there, if the Land do ly within a Franchise, the Sheriff cannot return Mandavi Ballivo, &c. for he cannot grant over his judicial power, nor make his Deputy in such case; But the Sheriff ought there to enter the Franchise, and to serve the writ himself; And if he shall do otherwise, it is error; For in these cases of Redisseisin, and waste, the Sheriff is Judge of the Record. *Where he is a Judge.* *Ne poet fair Deputie.*

Fitz. 188. c.Br.Rector.26. Note, that the said writ of Redisseisin commands the Sheriff, quod in propria persona sua accedat ad terram, &c. & per sacramentum faciat inquisitionem, &c. And so the writ to enquire of waste, is, quod accedat ad locum vastatum. 2 H.4.fol.1.

In

2 H.4.1. Br.Eject. Custod.1. In an Ejectione custodiæ, at the distress with Proclamation, the Sheriff returned Mandavi ballivo libertatis, &c. And by the opinions of Thirning and Markham, the Sheriff ought to be Amerced, for the Proclamation is to be made by the Sheriff by the statute of 13 E. 1.c.35. And then for that the distress with Proclamation, is a thing entire, the Sheriff ought to have entred the Franchise, and executed the whole writ himself: But Rikhill and Tirwit held the contrary, Ideo quære. *Where the thing is intire.*

Ibid. Yet note that in a Præcipe quod reddat of Land, part in guildable, and part in a Franchise, the Sheriff shall make his Precept to the Bailiff of the Franchise for parcel, and must serve and execute the rest himself.

Fitz.Chall. 2. Fitz. 155. 2. Where the Bailiff of the Liberty is party to the sute himself, he shall not Return the Jury, or make the pannel, but the Sheriff ought to enter the Liberty, and to pannel the array. Herle 7.E. 3. 56.& 7.Ass.11. *The Bailiff a party.*

And yet the bailiff of the Liberty might have made the Return in the name of another bailiff, For he might have made another bailiff for that time, by the opinion of Herle ibid. & Fitz. Chal.2.

But the Defendant himself shall never take benefit of a Liberty; And therefore if the bailif of a liberty be Defendant in any action, and Process of Capias, or fieri fac. cometh to the Sheriff against the bailiff of the Liberty, the sheriff shall execute the Proces upon him or his goods within the Liberty; for that the Liberty is always for the benefit of him that is a stranger to the action. Co.5.92.

And so it seemeth, where the Lord of the Liberty is party to the sute. Vide Plo. 46. Fitz. 155 a.

If any Felon, or other offender against the Kings peace, &c. shall be within any Liberty or Franchise, and the Justices of peace, &c. shall direct their warrant or proces to the sheriff for the apprehending of such offender, The sheriff is to enter such Franchise, and to execute the proces or warrant, and not to write to the bailiff of the Franchise, for that here the King is a party, 38.Ass.19.& 41.Ass. 17.Br.Franch.18.31.Co.5.2.part.fol.92. *The King a party.*

Plo. 216. 243. 33 Ass.19. 41 Ass.17. Also note that in all cases or actions wheresoever the king is a party, the proces always must be with a non omittas propter aliquam libertatem, for none is to serve the Kings Process but his Ministers; And there the Sheriff ought not to write, or send his Precept to the bailiff of the Franchise or Liberty, but ought himself to enter, and to execute, and serve the proces, otherwise he shall be amerced. And see Fitz. Chall' 129. that the King hath no other Minister than the Sheriff, and where the King is a party, no Franchise shall be allowed, &c. Fitz. Prerog.21. Enquest.12.

Note that the King gets no Franchise against himself. 22.E.3. fol.21.

Note also that every writ for the King (or where the King is a party) is always a Non Omittas in Law of it self. 41.Ass.17.

But in other cases where the King is no party, there, if without a Non omittas the Sheriff shall enter a Franchise which hath Return of writs, to execute any the Kings Process, though the serving of the Process be good, yet he shall be subject to the action of the Lord, &c. And therefore if the Sheriff, or his Officer, taketh one in execution for Debt, within a Liberty, although the execution be good; For that the Sheriff is the immediate Officer of the King and to the Kings Courts, to execute all Process; Yet the Lord of the Liberty or Franchise, may have his Action of the Case against the Sheriff, for entring into his Liberty. Fitz. N. Br.95.b. & 20.H.7.fol.7. Finch. fol. 52.

And in all Cases, as well upon the default of the Bailiff of the Franchise, as otherwise, it seemeth that as on the one part the Sheriff may (in some Cases) excuse himself, by returning that he hath commanded the Bailiff of the Franchise, &c. So on the other side, although the Sheriff may more safely enter the liberty, cum Warrantium habuerit (sc. upon a Non Omittas propter libertatem directed to him) yet if without a Non Omittas, the Sheriff, or his Officers by his command, shall enter the Franchise, and make execution of the Kings writ, it is good in Law, for that the Sheriff is the immediate officer to the King; and his Courts in such cases: And the only danger is, that the Lord of the Franchise may have his action against the Sheriff, or officer, for entring his Franchise, &c.

Emprisont [illegible].

But if the Sheriff or his Officer shall take one within a Franchise, upon a Capias, or other original process, the party so taken shall have no remedy; For it is all one to the party so taken, whether he be taken by the Sheriff, or by the Lord, or Bailiff of the Liberty; and yet here the Lord of the Franchise shall have his Action against the Sheriff, or his Officer, as before. 43. E. 3. 30. & 4. 11. H. 4. 9. Fitz. 95. b.

If the Bailiff of the Franchise shall take one in execution within the Guildable, it is error. 11. H. 4. fol. 9. Br. Offi. 35.

A Capias goeth out to the Sheriff of Middlesex, and they Arrest the party in London, a writ of false imprisonment lieth against them for this Arrest, And yet the Sheriffs of Middlesex are Sheriffs of London. Br. faux. imp. 26.

Seise biens de felons.

Bayliffs of Franchise ought not to take, or seise the goods of any person arrested, or imprisoned for Felony, before the same person be convicted or attainted of the Felony according to Law; Or that the same goods be otherwise lawfully forfeited; upon pain to forfeit the double of the goods so seised to the party grieved, &c. 1. R. 3. c. 3. Stamf. 193.

CAP. 118.

Bayliffs of Liberties and Goalers.

Cause prisoner deste approver.

Sheriffs, bailiffs of Liberties, and Goalers, which have the keeping of Prisoners to Goals, if by duress of imprisonment they shall compel Prisoners to appeal or accuse others, they shall be punished by the Justices of Goal delivery: see the statutes 13. E. 1. cap. 12. & 1. E 3. cap. 7. 1. E. 3. c. 7.

But after by the statute made 14. E. 3. cap. 10. It was made Felony for a Goaler or Keeper of the Prison to cause a Prisoner to become an approver or appealor. 14. E. 3.

Receiver felons.

Such Bailiffs of Liberties shall receive Felons arrested, or taken within their Franchise, and safely keep them in Prison without taking any thing: Cromp. 215. 4. E. 3. c. 10.

Et persons suspect.

Such Bailiffs shall receive night walkers, or other suspected persons, which shall be arrested or taken within their Franchise, And shall keep them in Prison till the coming of the Justices of the Goal delivery, &c. 5. E. c. 14.

Certifier lour prisoners.

Such Bailiffs shall certifie the names of such Prisoners as they have for Felony, at the next Goal delivery in that County or Franchise. 3. H. 7. c. 3.

Goalers.

Goaler.

4 E.3.c.10. 28 E.1.stat. de Appel. 11 E.4.f.4. Sheriffs and Gaolers shall receive and safely keep in their prisons, all Theeves, Felons, and persons appealed or indicted, which shall be taken and attached, and delivered or brought to them by the Constables and Townships; without taking any thing for the receit of them; And the Justices of Gaol delivery have authority to hear their complaints that will complain of the Sheriff and Gaoler in such case, and to punish them if they be found guilty. *Gaolers. Receiver Felons.*

But a Gaoler is not bound to deliver his prisoner who is discharged by the Court, untill he be payed his due Fees; For the prisoners is discharged paying his Fees. 8. E. 4. 18.

A Gaoler shall take no Fees for any Servant, Labourer, or Artificer committed to prison, for not serving, &c. neither at their Entrie, nor when they go out of Prison, upon pain of ten pound, 34 E. 3. c. 9.

A Prisoner acquitted of Felony, the Gaoler may take xx. d. which is called a Barr Fee: And if he take more it is Extortion.

Sheriffs shall have the keeping, rule, and charge of every of the common Gaoles in every of the Counties where they be Sheriff, and the Prisoners therein: And they must be in such Keepers, for whom they will answer: Statute 14. E. 3. c. 20. & 19. H. 7. cap. 10. & 23. H. 8. cap. 2. (See my Countrey Justice pag. 184.) Except all Gaolers whereof any person Spiritual or Temporal, or body Corporate have the keeping of estate of inheritance or succession. *Vic' charge ove Gaoles.* Co.4.34.

23 H.8.c.2. And all Murderers, and Felons, shall be imprisoned in the Common Gaols, and not else where. *Felons tantum.*

3 H 7.c.3. P.Prison.3. Every Sheriff, Bailiff of Franchise, and every other person having authority of keeping of Gaols, or of Prisoners for Felony, shall certifie the names of every such prisoner in their keeping, and of every Prisoner to them committed for any such cause, at the next general Gaol delivery, in every County or Franchise where any such Gaol is or shall be, there to be Kalendred before the Justices of the delivery of the same Gaol, whereby they may aswel for the King, as for the partie, proceed to make delivery of such Prisoners, according to the Laws, upon pain to forfeit to the King for every default there recorded five pound. 3. H. 7. c. 3. *Certifier lour prisoners.*

1 & 2 Ph.& Ma. c.13. No Writ of Habeas Corpus shall be granted to remove any Prisoner out of any Gaol, except it be signed with a Justices hand of the same Court, out of which the same Writ shall be awarded or made. *Habeas corpus.*

If a Goaler haveing a Lay man prisoner (or in his custody) shall suffer him to be instructed or to learn to read, the Gaoler shall be punished for this as a contempt or offence in disturbance of the common Law, in deceit of the King. Dyer. 205. b. Finch.

Fitz. 93.h. If a man be committed to the Gaol for debt, or arrerages of account and the Gaoler maliciously puts upon him so many Irons, or puts him in the stocks, or witholds his victuals from him, by reason whereof he becoms decrepit, lamed or otherwise diseased, &c. he may have his action of the case against the Gaoler: See my Country Justice tit. Imprisonment. *Misuse prisoners.*

And yet by the statute of Westm' 2. cap. 11. Accomptants, and such as are in execution, the Sheriff or Gaoler may put Irons or Fetters upon them, (scz. in reasonable manner,) See hic antea: Execution upon a Capias ad satisfac'.

Also notorious Felons, and such as be openly of evil name, or be Rebellious, shall have strong and hard imprisonment. Stat. Westm' 1. cap. 12.

But if any Sheriff, Gaoler or keeper of any prison, shall procure, or by duress shall compel, any of their Prisoners, to become Approvers, or to appeal guiltless people. &c. it is Felony. 14. E. 3. cap. 10.

Escape. If the Gaoler shall suffer a Felon to Escape, the high Sheriff, or Gaoler are chargable therefore, See hic cap. 126.

If the Gaoler shall suffer a prisoner to escape, which prisoner was found in arrearages before Auditors, and by them committed to his Gaol, now must the sheriff, or Gaoler pay to the party the sum of mony which was behind upon the account. Fitz. 95. c. & 130. b. Westm' 2. cap. 11.

And if the prisoner were in upon an Execution, (for debt, or dammages) and shall escape, the Sheriff, or Gaoler shall be chargeable for the debt, &c. Fitz. 121. a. p.

He which hath the keeping of the Gaol, by wright or wrong, shall be charged for the escape of prisoners, And if he which hath the Custody of the Gaol in Fee, substituteth another under him, at will, or for life, he which hath the actual possession of the Office shall be charged (by action) for the Escape; but if they be not sufficient, Respondeat Superior, &c. Co. 6. 98.

If the Conuzor of a Statute-merchant, be taken in Execution, and sent to prison, here if the Gaoler will not receive him, whereby he Escapeth, the Gaoler being able shall answer the Debt, otherwise the sheriff, &c. which committed the keeping of the prison to him, shall answer the Debt. Stat. mercatoribus.

And so in all other cases, where a man is condemned in any of the Kings Courts for Debt, and thereupon sent to prison, if the Gaoler shall refuse to take such a prisoner (being delivered or brought to him) if the prisoner Escapeth, the Gaoler, or Sheriff, &c. shall answer the Debt. And if the prisoner do not Escape, yet the Gaoler shall be fined (by the Justices of either Bench, or Justices of Assise, &c.) for such refusal only. 4. E. 3. cap. 10.

If a Gaoler shall refuse to take a Felon by the delivery of a Constable, he shall be fined. 4. E. 3. cap. 10.

But if between the Constable and the Gaoler the Felon shall escape, quære if this be not Felony in them both.

An Offendor committed to prison by the President of the College, &c. of the Physicians in London, if the Gaoler shall refuse to receive such an Offendor, or shall suffer him to Escape, he shall forfeit so much as was assessed upon the said Offendor. Stat. 1 Ma. c. 9.

Note, if one in prison for Felony Escapeth, if fresh sute be made after him, the Gaoler, &c. may take him again though it be six years after. See Fitz. Escape 2.

So of a Prisoner taken in Execution, who makes an Escape of his own wrong, &c. Co. 3. fol. 44. & 52.

Prist. oblig. If a Gaoler shall take any obligation of his Prisoner, with condition (endorsed, &c.) to be true Prisoner, it is void. Co. 10. 100. b.

So of a condition to pay for his meat and drink, such obligations are void. Co. 10. 100. b. For the sheriff, Gaoler, or other Officer, are bound to find meat or drink for their Prisoners. Plo. 68. a. Tamen Co. 9. 87. b. that the Gaoler is in manner compellable to find vitail for his Prisoners.

And it seemeth that Gaolers may not take any bond or obligation, of any their Prisoners, or of any other, for the inlargement of their Prisoners, in any sort whatsoever.

Con-

Concerning the gaolers Fees, &c. See hic postea titulo Fees. *Fees.*

Where a man is in prison, &c. although the party at whose sute he is committed do release to him, yet he shall be kept for his fine due to the King; And so if the King shall release to him, yet he shall be kept in Prison until he hath satisfied the party: And although both the King shall release his fine, and the party his duty, &c. yet the Gaoler may keep the Prisoner until he hath paid his Fee, and for his resonable dyet

Plo. 20. 6. Br. faux. imp. 32. Note, that in some case a prisoner sent out of one Shire or County, ought to be received by the sheriff or Gaoler of another County: And therefore whereas the stat. of West. 2. c. 11. provideth that in case of accounts before Auditors, and arrerages found Arrestent' corpora eorum & per testimonium Auditorum ejusdem compoti, mittantur & liberentur proximæ Goalæ dñi Regis in partibus illis, &c. Thereupon it was holden in 27. Hen. 6 that the Auditors ought to commit the accomptant to the next Gaol, although the next Gaol be in another County, for that they might not vary from the place limited by the stat. And then if the Sheriff, or Gaoler shall refuse to take such a prisoner being delivered to them, and so the prisoner shall escape, &c. the Sheriff or Gaoler are chargeable for the debt, by the same statute of Westminster 2.

Et en tiel case dicitur que le Seigneur poet aver breif hors del Chancery direct al vic. ou gaoler, &c. commandant luy de resceiver le Accomptant, Et sil ne voet il serra attache, & apres Distr' sil ne vient; Et sil vient & soit atteynt de ceo, il rendra damages al Signeur pur tout ceo que il ad estre in damage: Ou quant les Auditors amesnent le Accomptant al Gaoler, Et il ne voet resceiver luy, les Auditors poet lesser le Accomptant de aler alarge, Et nient obstant le Signeur avera breefe de Dett envers el Gaoler, accordant al parole del ceo statute: Et si le Goaler n' est suffic. donques le Segneor poet aver son action de Dett envers le vic. &c. qui custodiam Goalæ sibi commisit.

If a Felon be arrested by the Constable and carried to the Gaol, and the Gaoler will not receive him, whereby the Felon escapeth, the Gaoler shall answer it. See hic cap. 126.

CAP. 119.

The Fees, Allowances, and Vails due to the Sheriffs and their Officers.

Sheriffs and their ministers ought to take no reward, or other thing, for doing of their Office, but only of the King, or that which is appointed for them to take by the statutes (and Laws of this land) and if they do otherwise it is extortion in them: And if any Sheriff, or any of his Officers, &c. shall do any extortion, *Extortion.* and be thereof attained (either at the sute of the King, or of the party) he shall yeild twice as much as he took, to the party grieved, and besides he shall be punished for the same at the Kings will: or he may be indited thereof, before the Justices of Gaol delivery, or Justices of Peace, and by them punished, scz. they may be fined to the King: see the statutes 3. E. 1. cap 26. 20. E. 3. cap. 6. & 1. H. 4. cap. 11. Vide Co. *L.* 368.

Now extortion is thus defined or described.

Extortio est crimen, quando quis Colore Officii extorquet quod non

 est

Quid. est debitum, vel quod supra debitum, vel ante tempus quod est debitum. Co. 1. L. 368. Co. 10. 102

Another describes it thus: Extortion is where the Sheriff, Under-sheriff, bailiff, or other officer, by colour of his office, shall take any excessive reward or Fee; or shall take more than the Law doth allow him (for the execution of his office;) or shall take any reward, or fee for any matter, cause, or thing, where the Law doth allow no fee at all: P. R. 82.

Gather plus q'il est due. If the Sheriff or any of his officers, (or any other officer, by colour of his office) shall gather, levy, or receive of any person, any amercements, rents, or other duties, which are not due, or more than is due, this is extortion: and so Sir James Altham delivered it in his charge at Cambridge Assises: Ann. Dñi 1615.

So if by colour of their office they take from any man any mony, or valuable thing that is not due. Co. L. 368. So if they shall take any thing for expedition, it is Extortion.

Mony le Roy. If any man do levy, and receive mony due to the King or for the use, behoof, or service of the King, and do not imploy the same accordingly; or else doth not pay the same mony to the King, or his lawful Receiver, he may be indicted of Extortion: see 27. Ass. P. 15. & 17. Br. Fees 10. & 11. See hic cap. 126.

If the sheriff be to keep his Turn, and shall take of the Suters, or Tenants, any mony, or other reward to spare them from appearing there, this is Extortion although his Predecessors have used to take the like. 42. E. 35.

If any bailiff, or other, the Sheriffs officer, shall take any thing of any person, to spare them from appearing at the Assises, Sessions of the peace, or the like, it is Extortion.

If the sheriff shall Let to farm his County, Hundreds, or any of his Bailywicks, or any of his Courts, or any part, or profit thereof, seemeth to be Extortion, if he taketh any Fee or Rent for the same.

Sparing a Juror. If any sheriff, under-sheriff, bailiff of liberty, or any of their officers, shall receive, have, or take by himself or any other, any sum of mony, reward, or other profit, directly or indirectly, or do take any promise, make any agreement, or assent to have any sum of mony, reward, or other profit, directly or indirectly of any person, for the sparing, not warning, or not returning, of any person to be sworn as a Juror, for the trial of any issue joyned in any of the Courts of the Kings Bench, Common Pleas, or Eschequer, or before any Justices of Assise, it is Extortion, and every Sheriff and other Officer so offending, shall forfeit for every such offence v. l. to the King and Informer, &c. 27 El. c. 6.

Omit d'arrester, &c. If the Sheriff, or any of his officers, &c. shall take any mony, or other reward, for the omitting of any arrest, or attachment to be made, it is Extortion, and the Sheriff or other officer so offending, shall forfeit for every such offence xl. l. to the King and Informer, &c. 23 H. 6. c. 10

Pur monstre favor. So it is, if the Sheriff or Gaoler, &c. shall take any mony or other reward, for shewing ease or favour to any Prisoner or Person arrested: See Br. Fees 6. Ibid. 21 H. 7. f. 17 a.

So if the Sheriff or Gaoler shall detain any Person in prison (after they be discharged by the Court) for meat, drink, or other thing, except for their due fees onely, it is Extortion. 8. E. 4. fol. 18. Br. Fees 15.

Extre fee. And yet upon an action upon the statute of 23. H. 6. c. 10. for Extortion against an Under-sheriff, for taking of twenty pence above his fee, of a Prisoner in his Ward, &c. and upon evidence it ap- 21 H. 7. 16. 17. Plo. 465.

appeared that the Defendant and all Under-sheriffs of the same County, time out of mind, &c. had used to take of every Prisoner taken for suspition of Felony, and in their Ward, &c. twenty pence, when they were acquitted; and this fee they called bar mony, or a bar fee: And by the opinion of the Justices this case was out of the statute, for the intent of the statute, is, when sheriffs, &c. shall take such sums of mony of their Prisoners, to give ease and liberty to their Prisoners, (who are in their Ward) but here when the Prisoner was acquitted, he was no Prisoner, &c. and this fee was at the first assigned by the Court for a bar fee, by their discretion, in consideration of the great charge which the sheriff is at in keeping, carrying, and recarrying his Prisoners, and so keeping many servants, to convey and attend them, for danger of escape; And so it seemeth the sheriff shall have of every Prisoner which is acquitted of Felony, xx. s. called a bar fee.

Also where a Gaoler shall convey or carry a Prisoner into the Kings Bench, about a Writ of Error, to reverse an Utlary, he shall have for his labour by the discretion of the Court, and it is out of the statute.

21 H. 7. 17. *Si vicont ou Gaoler prist del prisoner son toge, ou auter garment, ou argent extra son burse, maugre son teste, ceux sont extra casum statuti, nec sont extortion, mes un trespasse; pur recovery de que le prisoner poit aver action, & recover le value in dammages.*

If a man be committed to the Gaol for 2 several Felonies, and be after discharged, he shall pay but one fee, for the Gaolers attendance was upon one person: and if the Gaoler shall take any more that one fee, it seemeth to be extortion: see 26. Ass. P. 47. B. Fees. 8.

The Sheriff or Gaoler shall take no fee of the Constable or Town, which shall bring or send a Prisoner to the Gaol for Felony. 4 E. 3. Cap. 10.

A servant committed to the Gaol for departing from his Master, or for refusing to serve according to the statute of laborers made 5. Elizab. the Sheriff or Gaoler is to take no fee of him upon his delivery. 5. Eliz. Cap. 4.

34 H. 6. f. 42 If a man that is attainted of trespasse do come into the Court, and prayeth to make his fine to the King, and offereth pledges for his fine, if the Gaoler (or other keeper of the prison) do take any fees of him it is Extortion, for that he came in gratis, and out of Ward, and yielded himself to the Court: but if there be proces awarded against him for his said fine, and he taken thereby, then he must pay his fees to the Gaoler, &c. and there it is no Extortion, for that he came in by compulsion, and not willingly, P. R. 9.

24 E. 3. f. 4. Br. fees 18. The Sheriff prescribed to have xl. s. per an of I. S. and his Ancestors for holding his Torn at D. for the ease of the Defendant and his Tenants, for which sum he distrayned, and by the Court it was holden that the Sheriff could not prescribe, for that he is an officer removable yearly, and therefore the taking of that sum was Extortion.

Sheriffs and their officers shall receive all Writs without taking any fee. 2. E. 3. c. 5.

Sheriffs and Gaolers shall receive Felons without taking any thing, &c. 4. E. 3. c. 10.

And if Sheriffs, their Officers, or Gaolers shall otherwise do, it seemeth to be Extortion.

23 H. 6. c. 9. [illegible] 465. No Sheriff, Under sheriff, Bailiff of Franchise, nor any other

Bai-

Bailiff, by occasion, or under colour of his office, shall take any other thing, by themselves, or by any other person, to their use, or profit of any person by them arrested, or attached, nor of any other for them, for the omitting of any arrest, or attachment, to be made by their bodies, or of any person by any of them by force or colour of their Office, arrested or attached, for fine, fee, mainprise, letting to bail, or for shewing any case or favour to any such person so arrested, for their reward or profit, but such as hereunder follow.

Lowe Fees sur Arrest.

The Fees allowed them by statute are these:

Upon an Arrest, or Attachment.	For the Sheriff.	xx. d.
	For the Bailiff who maketh the Arrest or Attachment.	iiij. d.
	For the Gaoler, if the Prisoner be committed to his Ward.	iiij. d.
	For any Obligation for appearance, if the Prisoner be bailed.	iiij. d.
For any Warrant making.		iiij. d.

And yet the use at this day is, that for any Warrant made upon any Writ, if the Warrant be directed to the ordinary bailiff, or bailiff of the Hundred, then for every name the Sheriff, &c. taketh iiij. d. But if the Warrant be made to a special Bailiff, then they use to take for every name ij. s. whereas there is no fee due to the Sheriff untill the arrest be made.

Also for the Copy of the Warrant, they use to take iiij. d.

Quære, how these two last be warrantable,

If the bailiff of a Franchise shall arrest one by a Capias to him directed from the Sheriff, the Bailiff of the Franchise shall have but iiij. d. and the Sheriff xx. d. and the Gaoler iiij. d. 23. H. 6. 10. Cromp. 58.

They are to take nothing for the making of any pannel, sub pœna 40. pound, and to yield treble damages to the party grieved. 23. H. 6. cap. 10.

But for the Copy of a Pannel they are to take iiij. d.

Retorne de pannel. And yet for the Return of the Pannel they use to take two shillings, but it seemeth to be extortion by the opinions of Master Lamb. fol. 415. and of Master Crompton fol 205. b. and the words of the statute of 23. H. 6. shews as much, the words whereof be thus: The Sheriff, Under-sheriff, Sheriffs Clerk, Steward, or Bailiff of Franchise, servant to the Bailiff, or Coroner, shall not take any thing by colour of their office, by him, nor by any other person to his use, of any person, for the making of any Return, or Pannel. And yet see the Sheriffs Oath. 27, Eliz. cap. 12. that seemeth to allow two shillings for the impannelling or returning of a Jury, Ideo quære. Ibidem.

Other Fees belonging also to Sheriffs, or at least claimed and taken by them, as appeareth in Mr. Powel.

First for the Executing of these Writs following, the Sheriff (it seemeth) may take, as he and the parties can agree.

Sc. For the Executing, &c. Of a Writ to Enquire of Damages. Of a Writ to Enquire of Waste. Enquiry upon an Elegit. And so it seemeth in all Cases where the Sheriff is to make any Inquisition. Also to Execute a Statute. Or an Habere facias Seisinam. Or an Habere facias Visum. A Writ of Right. A Writ de Particione facienda. For removing the Surcharge of Common, &c. The Writ of Forcible Entry, or holding with Force; where the party is to be Restored. For Execution of a Judgment, super breve de Dote.	For these the Sheriff may take, as he and the parties can agree.

The fees for Returns, sc.	Of every Cepi Corpus.	iiij. d.
	Of a Nihil.	iiij. d.
	Of a Non est inventus.	iiij. d.
	Of a Proclamation.	xij. d.
	Of a Venire facias.	xij. d.
	Of an Habeas Corpus.	ij. s. iiij. d.
	Of a Distringas.	ij. s. iiij. d.
	Of a Recordare.	ij. s.
	Of an Accedas ad Curiam.	ij. s.
	Of a Distring. nuper vic.	ij. s.
	Of Mandavi Ballivo Libertatis.	iiij. d.
	Of an Exigent, sc. for every name returned utlawed	iiij. d.
	Of Non est inventus, upon an Attachment out of the Chancery.	ij. s.

And yet the words of the Statute of 23 H. 6. c. 10. are thus, *Et que les viscount, Southvic. Clerk del Viscount, Jeneschal, ou bailiff del franchise, servant ou bailiffe, ne Coroner, preigne per colour de son Office, &c. d'ascun person pur le faisour de ascun Retorne, ou Pannel, ascun chose; Et pur le Coppy du Pannel forsque iiij. d.* Yet it seemeth that use and custom hath sithence allowed them divers Fees. See the Statute of 34 H. 8. cap. 26. hic postea.

But Co. L. 368. b saith, That they cannot take any thing, but where, and so far as the Statutes have allowed to them.

Also for a Replevin by pleynt in the County Court } ij. s. iiij. d. they use to take.

For the serving of the same Replevin.

For the allowance of a Supersedeas iiij. d. and if it be } xij. d. after the return of the Exigent.

If any Sheriff, or any their Officers, shall take any Fees, &c. contrary to the said Statute of 23 H. 6. cap. 10. they shall loose to the party grieved his treble damages, and besides shall forfeit forty pound to the King, and Informer, or other party that will sue for the same. *Le forfeiture.*

29 El. c. 4. No Sheriff, Under-sheriff, Bailiff of Franchise or Liberty, nor any of their Officers, Ministers, Servant, Bailiffs, or Deputies, by reason or colour of their Office, shall have, receive, or take of any *Sur Execution.*

person whatsoever, directly or indirectly, for the serving and executing of any Extent or Execution, upon the body, lands, goods, or chattels of any person whatsoever, more, or other considerations or recompence than is hereunder limited and appointed, sc. 12. d. of every 20. s. where the sum exceedeth not 100. l. and 6. d. of and for every 20. s. being over and above the said sum of 100. l. (sc. for every 20. s.) that he or they shall so levy or extend, and deliver in execution, or take the body in execution for, by virtue and force of any such Extent or Execution whatsoever, upon pain that every Sheriff, and other Officer, &c. which at any time shall directly or indirectly to the contrary, shall lose to the party grieved his treble damages, and shall forfeit besides 40. l. to the King and Informer, &c. 29 Eliz. cap. 4.

Le forfeiture.

Corporations. But this former Statute of 29 El. extends not to any fees to be taken for any execution done within any City or Town-corporate.

Liberties. Note, that Bailiffs, Stewards, and other Ministers within Liberties shall have like fees, and like punishments for extortion, as Sheriffs and their Officers have out of Liberties. 27 H. 8. c. 7.

But if the Sheriff shall arrest any man upon a Capias ad Satisfaciendum within a Franchise (as he may,) quære in such case whether the Sheriff, or the Bailiff of the Franchise shall have the fee; For the former Statute of 29 Eliz. c. 4. speaketh as well of Bailiffs of Franchises, as of the Sheriff; And it were a wrong to the Lord and Bailiff of the Liberty, if the Sheriff should have the fee in such case.

The Sheriff or his Officer arresteth one, who at the same time hath (in his purse, &c.) a Supersedeas out of the Chancery, which he delivereth to the Officer after the arrest, yet the Officer shall have his fee. 21 H. 6. fol. 20. Fitz. Retor. de vic. 16.

Proclamation. For making proclamation at the Church door upon an Exigent, &c. the Sheriff is to have 12. d. 32 Eliz. 3.

Their farms Also it seemeth, that there are due or belonging to the Office of a Sheriff (or that Sheriffs have in farm) certain other Fees, Annuities, Rents, Farms, Issues, Fines, Amercements, Escheats, Estreats, and other casual Revenues and Profits. See the Book 20 H. 7. f. 12. Tofts case vers. Cromer, and the usual Indentures made between the Sheriff and his Under-sheriff.

Profits in Torne le By the Statute made 1 E. 4. c. 2. all presentments and indictments taken by the Sheriffs in their Torns, shall be delivered to the Justices of Peace to proceed upon, who after shall estreat all fines and amercements set upon such offendors (as were indicted or presented in the Torn) and shall deliver such estreats by indenture (to the present Sheriff, &c.) to the use and profit of him which was Sheriff at the time of the taking of such presentments or indictments And the said (old) Sheriffs shall have to their own proper use the benefit of all such fines and amercements so estreated. 6 H. 7. f. 2 Br. Leet 21.

Yea the Sheriffs shall have all the amercements, fines, and other profits of their Torn, for that they have no other thing to levy so great a sum as they (and every of them) is charged withal upon their account, but the profits of this Court, by Fairfax, Fineux, and Tremaile. 6 H. 7. fol. 2. & 3.

Quære the certainty what the other profits of the Torne are, which the Sheriffs are to have.

And see the Statute of 2 & 3 E. 6. what allowances and rewards Sheriffs shall have upon their accompts in the Eschequer, and P. Sheriffs 38.

But note, concerning Felonies presented in the Torne, the Sheriff

riff is to have no profit thereof, but only the King. 6 H. 7. 3.

Co.4.33. Q. Elizabeth during the vacancy of a Sheriffwick, granted (by her letters patents under the great seal) to one, the office of the Clerk of the County Court, withall the Fees, &c. during his life, and after a Sheriff was chosen and made of the same County, and upon question made thereof, the Queens grant was adjudged to be void, for that the County Ct, & the entring of all the proceedings therein, are incident to the Sheriffs office, and so of the Sheriffs Torne; and therefore the Sheriff is to appoint Clerks under him, both in his County Court, and Torne, such as he will answer for. *In the County Court.*

And Law and reason both requires that the Sheriff, who is a publick officer and Minister of Justice, and who hath an office of so great Eminency, confidence, peril and charge, ought to have all rights appertaining to his office, And also ought to be favoured in Law before any private person, &c. Co. 4. 33.

The Sheriff is also to have all Amerciaments assessed or set upon offendors in the County Court. Whereof See hic cap. 115.

The Sheriff is also to have for the Entring of Pleynts, Proces, Plees, and Judgements in the County Court, the Fees due and accustomed.

By the statute made an 34. H. 8. the Sheriffs in Wales shall keep their County Courts monethly, and their Hundred Courts for pleas under xl. s. as is used in England, and shall take for the entring of plaints, proces, pleas, and iudgments in their said Shire Courts, and Hundreds, such small fees as are used to be taken in Shires and Hundreds in England. P. Wales 41. *Wales.*

P. 45. 34 H.8. All bills sued before the Justices of Assise in Wales in personal actions, whereof the debt, duty, or dammage is under xl. s. the Sheriff shall have for the return of every bill ij. d. and for every Venire facias, Tales, Habeas corpora, and Distringas ij. d. and for writs of execution upon the judgment in any such bill xij. d. And in bils sued before the said Justices in actions personal above the sum of xl. s. the Sheriff shall have for the return of every such bill. iiij. d. and for the return of every Venire facias, Habeas corpor. Distringas, and Tales iiij. d. and for every Writ of Execution ii. s. And in all personall actions sued by original writs returnable before the said Justices, the Sheriff shall have for every Iterum summ', Distring' and Alias Distring' iiij. d. And for every Venire fac', Habeas corpora, Distring' and Tales vi. d. and for every writ of Execution to be executed upon the judgment in any such actions ij. For the serving of every writ of Elegit vj. s. viij. d. And in all real actions or mixt, pursued before the said Justices by original writ, for return of every original writ ij. s. and for return of every other writ and judicial proces depending upon the same before judgment ij s. and for every writ of execution after judgement upon every original in actions real or mixt ij. s. and for serving of every writ of Habere facias seisinam 6. s. 8. d. And for Attachments upon Capias, or other proces sued before the said Justices by original or judicial writ if he return Cepi corpus 2. s. and for a Reddidit se upon an Exigent of Felony in appeal of murder, or maime, or upon any inditement of Felony or Murder, 2. s. And upon a Reddidit se upon an Exigent of debt, trespas, detinue, and all other actions personals 12. d. And for the making of a Repleg' 12. d. and Withernam upon the same 12. d. For the return of every writ of appeal of murder, felonie, or maime 12. d. And upon all other processe growen upon the same as Venire facias, Tales, Hab. corpora and Distring' 12. And in every action taken before

fore the Sheriffs by Justicies for the summons thereof 4. d. and for every other proces thereupon 4. d. And for every prisoner delivered by acquital, or by proclamation for any manner of Felony, 12. d. 34. H. 8.

And the said Sheriffs shall have for the return of a Writ of false Judgment out of a base Court, before the said Justices 2. s. And the said Sheriff shall take no manner of fee for the return of any of the said Writs of execution before expressed, unlesse he return the same executed. 34. H. 8. 34 H. 8. P. Wales 48.

Wales. Every Sheriff within the 12. Shires of Wales, hath for his Fee yearly five pound. 34. H. 8. cap. 26.

Cambridge. Where the Sheriff of Cambridgshire is to have to his own use for his time, ten pound per ann out of the Mannor of Maddingley, in the said County. See Stat. 34. H. 8. cap. 24. hic tit. Knights of the Parliament.

Also the Sheriff is to have divers profits of the County, under the name of Viscountiels. Whereof see hic antea cap. 3. & 9.

Every Sheriff (within one month after the arrival) may seise all the goods of Egyptians, &c. that shall come into this Realm, and may keep the one moitie thereof to his own use, making accompt to the King in the Eschequer for the other moitie. 22 H. 8. c. 10.

But at this day, Sheriffs are abridged of many of their ancient duties; for of ancient time, For theft only the Sheriff had to his own use, all the Felons goods. hic fol. 29. b.

CAP. 120.

Their Accompt.

By the Stat. de Scaccario made 51. H. 3. Sheriffs shall come to the proffer (and make their accompts and payments) in the Eschequer twice in the year, sc. the morrow after St. Michael, and the morrow after the Utas (or Octaves) of Easter.

Quære If this coming to the proffer, and making of Accompt in the Eschequer, must not be, or was not heretofore by the High Sheriff himself personally, The Sheriff may make his Accompt (or proffers) by an Atturney; to which purpose there is a Writ in the Register fol. 139. de Atturnat. Vicecomitis pro profero faciendo, admittendo. By which Writ also it appeareth, that these proffers (or this their Accompt) should be, ad Crastinum Sancti Michaelis, & ad octabas Paschæ, &c.

Also if there be cause the Sheriff may have a Writ (to the Treasurer and Barons) for the respitting of his Accompt, until some other day or time. Registr. 139.

And by the stat. of 5. R. 2. cap. 11. The Accompts in the Eschequer shall be more speedily heard, made, and ingrossed, than they were wont before times; Saving that the parcels of the same Accompts be made as fully as they were wont to be in times past.

No Sheriff shall be charged with any issues to be levied, nor shall levy any before they pass out of the Eschequer, by the Estreats of the Justices there to be levyed (And by those Estreats every head shall be charged for issues forfeited like as for Amercements) And if any sheriff will answer for the issues of any Recognisor, Pledge, or Mainpernour by him undertaken and retorned (into the Court) which at the time of the return is not able to pay such issues or amercements, the Sheriff shall be charged, and shall answer therefore in the Eschequer. And the Sheriff

shall

shall make Tallies (or Acquittances) to every one, of every sum of money which they shall receive, &c. 27 Ed. 1. cap. 2.

And yet all Fines, Amercements, Issues, Forfeitures, and Penalties whatsoever, arising before the Justices of Peace at their Sessions, are to be estreated by the Clerk of the Peace (out of the Records of the Justices) and to be indented by him, and then to be delivered, one part to the Sheriff to levy the sum thereby, and the other part to be certified to the Barons of the Eschequer; And the Sheriff is accomptable for the same in the Eschequer, upon those Estreats so certified, into the Eschequer. Stat. 14. R.c. 11.

Also upon Process, or Estreats, directed to him out of any other his Majesties Courts, the Sheriff is to levy the Kings Moneys, Fines, and Amercements, &c. Wilk. 35.

The time. But now it seemeth that as well High-sheriffs, as Under-sheriffs (of most Shires) in Hillary-Term next after they are out of Office, are sworn to yield up and give a just and true Accompt to the King, and his Officers of the Eschequer, of all such duties, perquisites, and profits whatsoever (happening within the time, or compass of their Office) which are due and belonging to the King, and chargeable upon them to answer for by reason of their Office. See the Statutes 51 H. 3. de Scaccario. Statut' de Rutland 10 E. 1. R. 2. cap. 5. & 5. R. 2. cap. 11. for what things they are accomptable.

It seemeth that Sheriffs may make their Accompts by Atturney, or may respit it by the Kings Writ. See Registr. fol. 139. a. a Writ de Atturnato vicecom' pro Profero faciendo admittendo.

The form of the Oath of a Sheriff for the passing of his Accompt.

YOu shall swear that you shall yield unto the Kings Majesty that now is, a true and lawful Accompt of the Issues and Profits of your said Office of Sherivalty in his Majesties Counties of *Cambridge* and *Huntingdon*, due unto his Majesty from the Feast of St. *Michael* the Archangel in the Twentieth year of his Majesties Reign, until the same Feast now last past (which is for one whole year) And in the same Accompt you shall make true answer of all Felons goods, Outlawed mens goods, Attainted mens goods, Weyffs, Estrayes, and all other profits whatsoever which hath come to your hands, your Undersheriffs hands, or any of your Bailiffs, Officers, or Ministers hands, by reason of your said Office. And in the same Accompt you shall charge your self with all such sums of Money, as you, your Undersheriff, or any of your Bailiffs or Officers for you have levied or lawfully might have levied to his Majesties use. And in the same Accompt you shall make no Petition, ask no Allowance nor Discharge, but such as shall be good and true. And that you do deliver a true Declaration of the Visecounticels, declaring of whom and where you do receive, and wherefore, all such sums of Money contained in the same. And well and truly behave your self in yielding the same Accompt, as a true Accomptant ought to do without Omission or Concealment. So help you God.

By the Stat. 1 E. 3. stat. 2. cap. 4. The Accompt of Sheriffs and other such Ministers shall be accepted after the points of their oath.

And by the opinion of Blage (one of the Barons of the Eschequer) Ann. 6. H. 8. the Sheriff is not accomptable for the goods of

Felons, Fugitives, and the like, save in a gross sum for the farm of the profits of the County. Kiel. fol. 173.

Neither is the Sheriff accomptable for other the profits of the County, save in a sum in gross. Ut supra ibid.

Now what the profits of the County be. See hic cap. 3.

If any Fines or Amercements (called Mulctæ,) be set or assessed in any of the Kings Courts upon any man; or any arrearages of Accompts (called Reliqua) of such things as is of Customs, Taxes, Subsedies, Tenths, Quinziesms, and the like, the Sheriff of the Shire doth gather them up, and is accomptable in the Eschequer for the same: But for the ordinary Rents of the Kings Lands, and most commonly for the Taxes, Subsedies, Customs, Tenths, and Quinziesms, there be particular Receivers and Collectors, which do gather up, and answer the same into the Eschequer. Smith de Repub. 59.

By the Statute 2 & 3 E.6.c.4. every Sheriff by himself his Attorney or Deputy, shall be sworn at his day of prefixion (when he shall answer before the Lord Treasurer, and Barons, &c.) to bring and deliver into the Eschequer, Rolls of parchment of all such particular sums of money which he hath, or might have levied, making mention of what person, of what Lands, and for what cause every of the said sums be levied.

This day of prefixion seemeth to be the day in or at which the Sheriff, by his Bond entred in the Eschequer, standeth bound to appear there to accompt for the charge of his Office.

The Under-sheriff, or his Deputy, is to attend unto, and to answer all the Opposals in the Courts of Eschequer, Kings Bench, Court of Wards, and other his Majesties Courts, when & where the Sheriff shall be opposed, called or examined; so that the High Sheriff, his Heirs, Executors, &c. and his and their lands & goods may be discharged of and from all fines and amercements.

What other things they shall be accomptable for, appeareth in part here before, tit. Franchises, Rents, Farms, Debts, Issues, Amercements, Fines, and Forfeitures: But yet for your better satisfaction, the experience and course of the Eschequer is to be learned.

The course of the Eschequer is said to be thus, sc. That so soon as a Sheriff hath entred into his accopmt (for issues, amercements, or mean profits for intrusions and alienations without Licence) to mark upon his head, O Ni. which is as much as, Oneratur Nisi habeat sufficientem exonerationem, &c. and presently he is thereby become the King's Debtor, and a Debet set upon his head: And so soon as the Sheriff is become the Kings Debtor of Record ut supra, presently are the other parties become Debtors to the Sheriff, and the Sheriff in that case shall cause the Debt to be levied against those particular persons by a Constat. Kiel. 187.

But where the King by Parliament shall pardon all Issues, Amercements, and Intrusions, &c. if the Sheriff after such pardon shall enter into his Accompt, without taking advantage of the pardon, here he is chargeable to the King by his own folly, and the particular persons are at liberty, and shall have advantage of the pardon, &c. Ibidem.

It seemeth that Sheriffs shall not be accomptable but for their own times, and for the year of their Sheriffwick only; neither shall they be charged, in or upon their accompt, with any arrerages or duties due to the King by any of their predecessors, in the said office of Sheriffwick. See the stat. 2 & 3 E.6.c.34. But quære if this Statute extend not only in the Sheriffs of Northumberland.

Sheriffs

Sheriffs how they shall be charged upon their Accompt in the Eschequer, with the ancient Farms and Rents of the Counties. See hic cap. 9.

Sheriffs shall not be charged with any other Issues than those for which they shall have Warrant under the Seal of the Eschequer. Hic cap. 11.

In all cases of lands where the Office is found before the Escheator, there the Escheator is chargeable: But where the Office is found before Commissioners, there the Sheriff shall be charged upon his Accompt; yet but according to the yearly value which is found by the Office, and no further. Keil. 172. 173. *The manner.*

The manner of their Accompt: See Mr. Wilkensons Book of the Office of a Sheriff, fol. 36. 37.

What allowances they shall have upon their Accompt, see more the Statutes of Rutland, made 10 E. 1. & 4 H. 5. c. 2. *Their allowance.*

And besides learn the use and course at this day.

All Sheriffs shall have such tayles of Reward, & other allowances, as they have heretofore had: And they shall be discharged upon their Accompts in the Eschequer of such sums of money which they cannot levy. 3 E. 6. 4.

What these Tayles be, see Dr. Cowel, verbo Tailes.

By the Statute 5 R. 2. c. 13. if an Accomptant, being Nihilled, will swear that he oweth nothing to the King, he shall be thereupon discharged.

By the Statute 1 H. 4. c. 11. Sheriffs shall have allowance by their Oath, of the Issues of their County.

Also by the Statute 4 H. 5. c. 2. Sheriffs shall have allowance upon their Accompts by their Oaths, of things casual, &c. But not of such things as run in yearly Farms, or yearly Demands.

Sheriffs also shall have allowance for the wages of the Justices of Peace at their Quarter-sessions; but the Sheriffs allowance herein is but iiij. s. a day apiece for eight Justices: And herein the Sheriff is often wronged by the Clerk of the peace of the same County, who receiveth all the Fines, and payeth the wages, and if there be any surplusage, puts it in his own purse, &c. Wilk. 39. Vide hic cap. 90. & 99.

And they shall have allowance for their charges and expences which they sustain by the Justices of Assise dyet, and by other means. 3 E. 6. c. 4. 34 H. 8. 16.

For the ordinary charges of the Sheriffs Accompt, see a particular thereof in Mr. Wilkensons said Book, fol. 38, 39, 40, & 41. *Their charge.*

But besides those ordinary charges, the extraordinary fees and charges of passing the Sheriffs Accompts seem to be such, and the business it self so tedious, as it troubleth them all (be they never so skilful therein:) which thing requireth a redress, considering that the Under-sheriffs, or Officers upon whom this burthen lieth, are thereby not only stripped themselves of almost whatsoever they shall justly or honestly save in their Offices. but are also enforced thereby to extort and wring from the Subjects to make themselves savers.

None of the Sheriffs of the countyes of Surry and Sussex, Essex and Hertford, Somerset and Dorset, Warrwick and Leicester, Nottingham and Derby, Oxon and Berks: (being sometimes joyned) shall pay in any Court of Record, for any duty belonging properly to the Office of a Sheriff, any other fees or charges, than only the one half of the charges and fees which he should have payed if he had been Sheriff of two of the said Shires, as formerly was u-

sed;

sed; And their Charges, and Rewards, &c. shall be divided. 8 Eliz.cap.16.& 13. Eliz.cap.22.

Sheriffs having their Quietus est, they, their Heirs, Executors, and Administrators, Lands, Tenements, Goods, and Chattels, shall be absolutely discharged of their Accompts, (sc. of all manner of sum or sums of money which they shall have levied, or received, and shall be pretended not to be accompted for, &c.) unless such Sheriff shall be called in question for the same within four years after the time of their accompt and Quietus est. Statute 21. Jac. Regis. cap.5.

And every Officer that shall send out any Process, or by whose default any Process shall be sent out contrary to the former Statute, shall for every such offence forfeit to the party grieved forty pounds, and besides pay costs and damages; the same to be recovered in the Kings Bench, or Court of Common Pleas.

Now this Quietus est must be a full discharge out of the Kings Majesties Court of Exchequer, as well of his green Wax and Pipe silver, as also for, and upon Recusants Lands, Seisures, and for all other Debts, Duties, and Demands, which are, shall, or may be charged in the said Sheriffs Accompts, or which may be imposed, for or by reason of the said Sheriffs office. And the High-sheriff shall do well to bind his Under-sheriff, to procure, and deliver to him such a Quietus est, within one year after his Office is expired.

Totting. Nichiling. Amongst other things, it seemeth behoveful for Sheriffs or Under-sheriffs, upon the making of their Accompts, to have a special care what they Tot, & whom they Nichil, that is, that they charge or discharge men orderly, honestly, and with understanding; for if they Tot or charge any thing, though it can never be levied, yet it will now hardly be avoided, but it must be payed; and if it be Nichiled, if it be issues of Jurors, though they be never so bad, and cannot be levied, yet between the old Sheriff which returned them, and the new Sheriff which Nichilled them, they must be payed, (by the Statute made 27 E.1.c.2.) although it be seven years after, 27 E.1. if there come no pardon in the mean time. And yet where the old Sheriff returneth a Juror in issues, the next Sheriff cannot, nor may not return the same Juror Nihil, contrary to the former return of his Predecessor, by the Book 19 H.6. Br. Retorne 49. See hic antea fol. 75.

Liver des nosmes les freeholders. But to prevent this, it behoves all Sheriffs before they take upon them to return any Jurors, to get them a true and perfect book W.34. of all the sufficient Freeholders names in the Shire, and especially of all those which dwell in the guildable (howsoever they do of those which are in Liberties, but of both is best, that the one may help the other,) and to return few or none that be mean Freeholders in the guildable, lest (by the former recited Statute) they be enforced to pay their issues for them; and this they may bring to pass, either by the help of the Justices of Peace in their several divisions, who may cause the Constables of every particular Town, to bring a true Certificate (of the sufficiency of every Freeholder within their several Towns) unto the first Sessions (that shall be holden in that County, &c.) after the election of the new Sheriff, to be to him delivered there; or else the new Sheriff himself may cause his Bailiffs to do this within every of their Hundreds or Divisions; and besides the help of the Subsidy Books will not be a little available hereunto.

This word totting or totted, is a word used of a Debt which the forein opposer, or other officer in the Exchequer noteth for a good debt

debt to the King, by writing this word (Tot) unto it. Minsh.

Also this word Nichilling, or Nichil, is a word set upon a Debt by the forein opposer in the Exchequer, when that it is illeviable, or cannot be levied. Ibid.

So that it seemeth, by Totting is understood Charging; and by Nichiling is understood Discharging of the party indebted, &c.

By the stat. 5. R. 2. Cap. 13. The accompts of Nichil in the Eschequer shall be wholly put out; or if any such shall remain, the Accomptants immediately after their Oath taken in the Eschequer that they owe nothing to the King, they shall be discharged, &c.

And there is an Officer in the Eschequer, called the Clerk of the Nichils, who maketh a Roll of all such sums as are Nichilled by the Sheriffs upon their estreats of green Wax, and delivereth the same in to the Lord Treasurers Remembrancer his Office, to have execution done upon that for the King. Minsh.

Forein opposer, Forinsecarum Oppositor, is an officer in the Eschequer, to whom all Sheriffs and Bailiffs do repair, by him to be opposed of their green Wax, and from thence draweth down a charge upon the Sheriffs or Bailiffs, to the Clerk of the Pipe. Minsh. & *Termes del Ley*. *Forein opposer.*

Now with this foreign Opposer, the Sheriff must either Tot, Nichil, or set over into Liberties all the debts and sums of money contained in the Summons of the green Wax, and in the extracts of the peace of the County where he was Sheriff: wherein let him be careful first fully to learn which are good debts, and which are not, and which are within Liberties, and which are not, before he come to his Accompt or Opposals, and then to make his Book of all the charge contained in his Summons and Schedules, accordingly. W. 37.

Green Wax, this word seemeth to be used for the estreats (of the fines and amerceaments, &c. delivered to Sheriffs out of the Exchequer, under the seal of that Court, to be levied in the County. Ibid. See the Statutes made 42 E. 3. c. 9. & 7 H. 4. c. 3. *Green Wax.*

Clerk of the Pipe is an Officer in the Kings Exchequer, who having all accompts and debts due unto the King delivered, and drawn down out of the Remembrancers Officers, chargeth them down into the great Roll; who also writeth summons to the Sheriff to levy the same debts upon the goods and chattels of the said debtors; and if they have no goods, then doth he draw them down to the Lord Treasurers Remembrancer to write extreats against their Lands. The ancient Revenues of the Crown remaine in charge before him, and he seeth the same answered by the Farmers and Sheriffs to the King. He maketh a charge to all Sheriffs of their Summons of the Pipe, and green Wax, and seeth it answered upon their Accompts. He also hath the ingrossing of all Leases of the Kings Lands. Ibidem. *Clerk of the Pipe.*

The Pipe-office seemeth to be so called, because their Records there which be Registred in their smallest Rolls, are altogether like to Organ-pipes. Minsh.

But they have another Roll there, called the great Roll (or Pipa) which is of another form. Ibid.

A Clerk of the Remembrance of the Exchequer shall be assigned to sit with the Clerk of the Pipe, to see discharges made in the Pipe, and to inroll them in the Remembrance, to cease all Processes thereupon made: And the Summons of the Pipe shall be withdrawn according as the parties by processes be discharg'd. 17 E. 3. c. 4.

The Clerk of the Pipe, and the Remembrancers of the Exchequer

quer shall be sworn, that from Term to Term (whilst the Exchequer shall be open) they shall see all Writs (of the great Seal or privy Seal) which shall be sent to the Exchequer the same Term, for the final discharge of any person, of any demand in the Exchequer, be entred, &c. 5 R. 2. cap. 14.

Also the two Remembrancers shall be sworn to make every Term a Schedule of the names of every one that is discharged in their Offices, by Judgment or otherwise, of any demands containing their discharge, and shall deliver it to the Clerk of the Pipe the same Term, to the intent that the Clerk of the Pipe shall thereof discharge the said parties in the great Roll. Ibid.

Also the said Clerk of the Pipe shall be sworn, that he from Term to Term shall require the same Schedules, and the same by him so received, he shall discharge the said parties in manner aforesaid: And in the same manner the said Clerk of the Pipe shall certifie in writing to the said Remembrancers, the discharge made in his Office, to the intent that a man discharged in one place shall be discharged in all other places of the said Exchequer. 5 R. 2. c. 14.

Officers, &c. in the Exchequer, vide Touts ceux in *Minsh.*

There be 2 Officers in the Exchequer, called Parcel-makers: these make the parcels of the Escheators accompts, &c. v. Minsh.

Pipe (Pipa) seemeth to be a Roll in the Eschequer, otherwise called the great Roll. Minsh.

Clerk of the Pipe, quid see Minsh.
Clerk of the Estreats. Ibid.
Clerk of the Pell. Ibid.
Clerk of the Plees. Ibid.
Clerk of the Nichils, quid Ibid.
Foreign Opposer, quis Minsh.

Remembrancer { Of the King. / Of the Treasurer. / Of the first Fruits.

Tellers, *sont* 4. *in Leschequer lour Office* vi. Minsh.
Treasurer, sc. Lord Treasurer, vi. Ibid.

Writer of the Tallies, is a Clerk to the Auditor of the Receipt, & writeth upon the Tallies the whole Letters of the Tellers Bills.

Remembrancers. Remembrancers of the Exchequer (Rememoratores) be three Officers or Clerks; one called the Kings Remembrancer, Stat. 35. El. c. 5. And another called the Lord Treasurers Remembrancer, upon whose charge it seemeth to lye, that they put all the Justices of that Court (as the Lord Treasurer, and the Barons) in remembrance of such things as are to be called on, and dealt in the Princes behoof. The third is called the Remembrancer of the first Fruits, concerning whom, See the Statute 37 E. 3. c. 4. & 5. R. 2. Stat. 1. c. 14. & 15.

The Kings Remembrancer entreth in his Office all Recognisances taken before the Barons, for any of the Kings debts, for appearances, or for observing of Orders. He also taketh all Bonds for any of the Kings debts, for appearances, and for observing of Orders, and maketh out Process upon them for the breach of them. He writeth Process against the Collectors of Customs, Subsidies, and Fifteens, for their Accompts. All informations upon penal Statutes are entred in his Office; and all matters upon English Bills in the Exchequer Chamber are remaining in his Office. He maketh the Bills of Compositions upon penal Statutes; taketh the stalements of debts; maketh a Record of the Certificate delivered to him by the Clerks of the Star-chamber of the Fines there set,

set, and sendeth them to the Pipe. He yearly (in Crastino Animarum) readeth in open Court the statute for the elections of Sheriffs, and giveth those that chuse them their Oaths. Ibidem.

The Treasurers Remembrancer maketh Proces against all Sheriffs, Escheators, Receivers, and Bayliffs for their accompts. He maketh Processe of Fieri facias, and extent, for any debts due to the King, either in the Pipe, or with the Auditors. He maketh Proces for all such Revenue as is due to the King by reason of his Tenures: He maketh a Record, whereby it appeareth whether Sheriffs & other accomptants pay their profers due at Easter and Mich. he maketh another Record, whereby it appeareth whether Sheriffs and other accomptants keep their dayes of prefixion, (or dayes, or times appointed;) All estreats of fines, issues, and amerciaments set in any Courts at Westminster, or at the Assises or Sessions are certified into his Office, and are by him delivered to the Clerk of Estreats to write Proces upon them: he hath also brought into his office all the accompts of Customers, Controllers and other accomptants, to make thereof an Entry of Record. Ibid.

The Remembrancer of the first fruits taketh all Compositions for first fruits and tenths, and maketh Proces against such as pay not the same. Ibid.

The Clerk of the Estreats is also a Clerk belonging to the Exchequer who termly receiveth the Estreats out of the Lord Treasurers Remembrancer his Office, and writeth them out to be levied for the King, he also maketh Schedules for such sums estreated as are to be discharged. Ibid.

The word Profers, is the time appointed for the Accompts of Sheriffs and other officers in the Exchequer, which is twice in the year, (Minsh.) see stat. de Scaccario. 51. H. 3. hic antea. Or else the word Profers may seem to signifie the Accompt it self, or the profits or things for which they are to Accompt.

Note that if the Sheriff shall seise the goods of one that is outlawed, or for other like cause, and when he maketh his accompt, he doth not accompt for the same, &c. it seemeth the owner of the goods may have an action of Trespass against the Sheriff for such seising or taking of his goods, (and shall recover the goods, or the value thereof in damages) for that the Sheriff must plead that he hath accompted for them: and if he shall not accompt for the same, he shall be said to be a trespassor ab initio, see 3. H. 7. 3. b. & 21. H. 7. 23. also see 18. E. 4. 23. 7. H. 4. 5. & 14. H. 6. 5.

If the Sheriff (or his officers) shall gather or levy the Kings Rents, Debts, or other duties, and shall not accompt for the same in the Exchequer upon his accompt, the Sheriff is liable both to the King, and to the action of the party, &c. besides the danger of his Oath.

And therefore in an action of Trespass a Sheriff for taking the Plt. Cattel, &c. the Sheriff justified that he distrained for Rent due to the King, and that he had accompted for the same Rent in the Exchequer. Liber Intrac. tit. Trespass. But otherwise it is, if the time be not come, wherein the Sheriff is to accompt.

Note, that the high Sheriff is accomptable (for all things belonging to his Office) to the King; And the Under-sheriff shall yield an accompt to his high Sheriff. 11. R. 2. fitz. Accompt. 48.

14 Car. 2. c. 21. *Sheriffs eased in passing their Accompts in the Exchequer.* *Vide the Appendix.*

For the better help of Sheriffs, I have here again shortly set down their dangers, &c. that so by their care and deligence they may the better prevent and eschew the same.

CAP. 121.

The Dangers, Forfeitures, and Punishments of Sheriffs, for things done, not done or misdone by them, or by their Officers. Cap 123.

Albeit that the care of our Parliaments hath alwayes been, that choice should be made of such Persons for this Office of the Sheriff, as should be men of good sufficiency, such as might attend to execute this Office (for the good of the King and his people) and such as needed no Reward for their travel and pains in that behalf (as may appear by the several statutes here before recited,) yet partly in regard of their great charges by them undergone, as well in their attendance and execution of their places, &c. as also of the great sums of mony wherewith they are charged upon their accompts; and partly in regard that it is not possible that the Sheriffs themselves should do execution of all things belonging to their offices, but that they must use the help of divers and sundry other inferior officers and persons therein; therefore the Laws and Statutes of this Realm have not only rewarded the high Sheriffs themselves, but also their inferior officers with some small allowances, avails, and fees, as may appear here before. And on the other side, for that the negligence, remisness, and misdoing of men, put, and placed so highly in trust, if it should not sometimes be corrected by due chastisement or punishment, it would breed not only too much dulnesse or carelesness in these chief officers themselves, but also much extortion, oppression, and other wrongs, both to the King and his people, from them, but especially from their inferior officers and ministers. Therefore the Laws and Statutes of this Land have likewise inflicted due punishments and pains, not only upon the high Sheriffs themselves, but also upon their inferior officers; and in many cases upon the high Sheriff himself, for the faults and defects of his under officers; as may partly appear here before throughout this book and more particularly in this that followeth.

And therefore in some cases the Sheriff, &c. shall be amerced, and in some cases shall pay a fine, or forfeit to the King. In other cases he shall be imprisoned; and in some cases may be indicted as an offendor against the King in the highest degree; and in other cases shall be liable to the action of the party grieved, and chargeable to pay his debt or damages.

Escape. And first note, that the Sheriff of every County shall have the keeping of, and shall be chargeable, and charged with the common Gaol, and Prison of the same County (where he is Sheriff) and with all the Prisoners therein; and must put in such Gaolers for whom they will answer, by the statutes of 14. E. 3. c. 10. & 19. H. 7. c. 10. Co. 4. 34. And therefore the high Sheriff himself shall be answerable for the escape of a Felon, suffered by his Gaoler, and (by some opinions) may be indicted of Felony for the same, if the escape suffered by his Gaoler were voluntary. See the Presidents to this purpose in Lamb. v. v. 5. and in West. M. 1. *6 H. 7. 11. & 10 H. 7. 26. Co. 9. 98.*

De felon. And yet Sir John Savadge being a Sheriff in fee, was (in 5. M.) indicted in the Kings Bench for the escape of two Felons suffered by himself, felonicè & voluntariè, &c. and his office was only seised therefore, &c. as it seemeth in Dyer fol. 151. & Keil. 192.

But yet note that Sir John Savadge was not there put to answer, upon the Indictment by way of Arreignment, but upon a

Scire

Scire Facias, &c. otherwise if he had been arraigned and found guilty, Judgment of death might have been given against him for that Escape. See Keil. 195. 196.

And though he which hath the custody of the Goal, shall be charged with the escapes of Prisoners, yet if he be not sufficient, then respondeat Superior, sc. the Sheriff from whom the Goaler had the custody of the Goal committed to him. Vide Co. 9. 98.

But the Dr. and Student, cap. 42. maketh this difference, sc. where the escape was by negligence, there the Goaler or Sheriff may be charged therewith; but if it were a wilful Escape in the Goaler and so Felony, the Sheriff shall not answer to the Felony; but then it seemeth he may be fined to the value of his goods, for that the Escape was voluntary. See Stamf. 35. H.

And indeed such an Escape, though wilfully suffered by the Goaler, or other the Sheriffs Officer, without the Sheriffs knowledge or consent, may seem but a negligent Escape in the Sheriff, and so but fineable in the Sheriff, (or a cause to seize his Office being in Fee) and to be Felony only in the Goaler or Officer, who voluntarily suffered the Escape. See Cromp. 252. b. Dr. & St. 137 & quære inde.

If the Sheriff shall bail and deliver a prisoner, who is in Prison, or under arrest for Felony or suspicion of Felony, this is a voluntary Escape, and so seemeth to be Felony in the Sheriff; Except where he doth it by virtue of the Kings Writ to him directed for that purpose.

If the Sheriff shall keep a prisoner (which is committed for Felony) in his own house, quære if this be not an Escape, for that the Goal is the Kings Prison, and there such as be prisoners for matters concerning the King, ought to be kept. See Cromp. 184.

Where a Felon is taken prisoner by the Sheriffs Bailiffs in a Town, and in going to the Goal the prisoner escapeth, the Escape shall be adjudged upon the Sheriff, and not upon the Town. 3 E. 3. Fitz. Cor. 337.

By the Statute of 3 E. 1. cap. 9. if any Sheriff for any cause shall conceal any Felony done within their County; or shall not attach or arrest such Felons within their County, as they may, they shall be imprisoned for one year, and fined at the Kings pleasure. *Felon nient attach.*

If any Sheriff or Goaler shall deny to receive any Felon, by the delivery of any Constable or Township, or shall take any thing for receiving of such, they shall be fined by the Justices, &c. 4 E. 3. cap. 10.

If a Felon be arrested by a Constable, and carried to the Goal of the County, and the Goaler will not receive him, and the Constable letteth him go, and the Goaler also, and so he escapeth, this is an Escape in the Goaler, for that in such case the Goaler is bound to receive him by the hand of the Constable without any precept of the Justice of the Peace: And quære if it shall not be said to be a voluntary Escape, and so Felony in the Goaler.

But otherwise it is if a common person arrests another upon suspicion of Felony, there the Goaler is not bound to receive him without a precept of some Justice of Peace. *Terms del Ley*. tit. Escape.

If one be found in arrearages before Auditors, & the Auditors bring the Accomptant to the next Goal, and the Goaler will not receive him, the Auditors may let the Accomptant go at liberty, and notwithstanding the Master or Lord of such Accomptant shall have his action of debt against the Goaler, & if he be not able to answer the debt, the Sheriff shall be answerable, according to the Statute. Lectur.

Every Sheriff ought to certifie in a Kalender the names of all their prisoners which be in their Goal for Felony, at every Assises or Goal-delivery, sub pœna 5. l. hic 143. 144.

Levy money pur Escape If the Sheriff, or any other, do take or levy any thing for the escape of any Felon, before it be adjudged by the Justices in Eyre, Justices of the Kings Bench, or before some other Justices that have authority to enquire thereof, he shall restore to the party, or to him that payed it, as much as he received, and besides as much to the King. Westm' 1. 4. & 31 *E*. 3. c. 14. Et hic cap. 14. 3 E. 1. c. 4.

Escape del dettor. If the Sheriff do suffer any Bailiff, Chamberlain, Servant, Receiver, or other Accomptant to go at Liberty, which is committed to prison by Auditors; or if the Sheriff shall bail, or otherwise deliver them without the consent of their Master, the Sheriff shall answer the whole debt or damage which the Master hath sustained by the said Accomptant. 13 E. 1. c. 11

So if a Goaler shall suffer any such Bailiff, &c. or other Accomptant which is committed to prison by Auditors, to go at liberty, or to escape, if the Goaler be not able to pay and answer the debt, the Sheriff that committed the custody of the Goal unto him, shall be answerable. Ibid.

And so it seemeth in all cases of Escape, the Goaler or Under-officer who hath the actual possession of the Goal or Office, shall answer for all escapes: But if they have not sufficient wherewithal to answer, respondeat Superior, sc. he which committed or granted the custody of the Goal unto him, shall answer it. Co 9. 98.

If the Sheriff arrest a man by force of a Capias, awarded to bring him at a certain day returnable, if there the plee shall be discontinued by the death of the King, or by the not coming of the Justices, or by any other means, then the Sheriff may suffer the same person so arrested to go at large (of his own authority) for that that Record is determined: But otherwise it is where the Sheriff hath arrested one by force of a Capias ad satisfac', for here the Record always remains. Kiel. 2.

And if a man be taken in Execution upon a Capias ad satisfac', and is committed to the Goal, and the Sheriff suffereth him to make an Escape, the Sheriff is chargeable for the whole Debt, hic fol. 8 50. 56. (*Uncore si le vic. ne returne le breife, le Plt. poet aver novel Execution vers le Dettor; & pur ceo le vic. poet forbeare de Retorne ceo; & de compound ove le Plt*. Co. 3. 52.)

So if his Under-sheriff, or any of his Bailiffs having taken one in Execution, suffereth the prisoner to escape; or if the prisoner of his own wrong breaketh away, or if the prisoner be rescued by strangers: in these cases the Sheriff himself shall be charged for the escape, and shall be chargeable to pay the whole debt: For the act or default of their Under-sheriffs, Deputies, or Bailiffs, shall charge the Sheriff himself. See the Stat. 1 R. 2. c. 12. & 7 H. 4. c. 4. Fitz. 93. c. & Br. Officer 24. & 33. & hic antea fol.

And it is no good return for the Sheriff, quod mandavit ballivo itineranti, *que respondit que il arrest le partie, & rescous est fait*; for this was the arrest of the Sheriff himself: And if the arrest were upon a Capias ad satisfaciend', or Capias utlagatum after Judgment, and that a Rescous be made upon the arrest, whereby the party arrested escapes, the Sheriff himself shall be charged for the escape, &c. except it were by the Kings enemies: but if it had been by Bailiff of a Franchise, the return had been good, and there a Non omittas should have gone out. Dyer 241.

Note, that in case of such a Rescous, the Sheriff must take his

remedy by action of the Case, against them which made the Rescous (Dyer. 241.) and they many times little worth, and so the Sheriffs remedy in such case is very easie.

Uncore si un soit in Execution sur un Condempnation, & le Prison happe d'estre enfreint per Enemyes le Roy, ou per sudden tempest, ou fire, le que est le act de Dieu ou per tiel force ou vehement power que le Officer ou Gaoler ne poet resist eux, donques ceo est bon plea, &c. Mes si le prison serra enfreint per Rebells, ou traitors deins le Realme auterment est pur ceo que il poet aver remedy ouster envers eux come avant dit, 33. H. 6. fol. Dyer. 66. pl. 15.

A man attained of Felony and imprisoned for it, brings an action of debt against him, and hath Judgment and Execution against A. and after A. got his pardon, and the Gaoler suffered him to go at large, whereupon C. brought an action of Debt against the Sheriff for the escape, and it was judged maintainable: so that notwithstanding that A. were attainted, yet he was also in Execution for the Debt. This was one Crofts case, and so adjudged in the Eschequer tempore Eliz. Rñe.

Now what other acts shall be said to be an escape, which shall charge the Sheriff. *Escape del detter.*

Crom. 204.b. The Sheriff or his Officers, have one in execution for debt, and after carrieth the prisoner into another County to talk and take order with his creditor, this is an Escape. Vide Dyer. 296.

Crom. 206.a. The Sheriff, &c. having one in execution for debt, takes bonds of the prisoner, and of divers others, to pay the said debt or sum at a certain day, to the Sheriffs son, or other friend, and then lets the prisoner go at large, this is an Escape.

The Sheriff upon a Capias ad satisfac' returneth a Cepi corpus, but hath not the body at the day, &c. he is chargeable for an Escape, hic 69. 82.

So if upon a Fieri fac' he returneth Fieri Feci, but hath not the mony at the day, he is chargable for the mony, hic 69.

The Sheriff (or his Officers) arresteth one upon a Capias ad satisfac' and do not return the Writ, this is an Escape. Cromp. 207. a. & hic fol.

The Sheriff, &c. hath one in execution for debt, and then licenseth the prisoner to go at liberty for a time, and then to return, who returneth accordingly at his day, yet this is an Escape. Co. 3. 44.

If the Sheriff, &c shall suffer the prisoner (which is in upon an execution) to go at large, although it be by bayl, or mainprise, or by baston (sc. with a Keeper) before the prisoner hath agreed for his debt, this is an Escape; for such prisoners ought to be kept in salva & arcta custodia. See the statutes 1. Rich. 2. cap. 12. & 7. Hen. 4. cap. 4. & Co. 3. 43. 44. & Plo. 36. 37.

See Dyer. fol. 278. where a man being in execution for debt in the Marshalsey, was suffered by Gawdy Deputy of the Prison (under the Duke of N. Marshal of England) to go into Norff. with a keeper for a certain time, and the prisoner came and returned again to the Prison at the day assigned, the plt. brought his action of debt against Gawdy, upon this escape, and it was adjudged against Gawdy, and the plt. recovered, &c.

Note, that by Law, a prisoner who is in upon an Execution, ought not to be suffered to go at large or at his liberty, neither within the prison, nor without the prison, although it be with his keeper. And anno 24. H 8. in the Star-Chamber, all the Keepers of Prisons in London were enjoyned upon pain of 100. l. not to suffer any of their prisoners to go at liberty, within or without the Prison, Dyer. 249.

But

But if a Prisoner who is in upon an execution, shall of his own head and wrong go at liberty, and after shall return again, and shall yield himself Prisoner, or shall be taken again by the Sheriff or Officer upon fresh sute (before any action be brought by the Plaintiff against the escape) this is no escape. See Co. 3. 44. & 52. & hic fol. 57.

Co. ibid. Br. Escape 4. & 35. And so if one in execution for debt, shall of his own wrong escape into another County, and the Sheriff or his Officers shall there take him again upon fresh sute, and before any action brought, &c. this is no Escape.

If one in execution for debt, be set at large by the act of any of the Kings Courts, (sc. by the Kings writ from out of any of the Kings Courts) this is no Escape which shall charge the Sheriff, except it be in some special cases. See 38. E. 3. fol. 8. & 2. E. 4. 8. Cromp. 215. & hic fol. 58.

See the case of a Burgess of the Parliament delivered by a Writ of Priviledge, &c. Dyer, fol. 60. & hic cap. 21.

And yet upon a Writ de Homine repleg', the Sheriff delivers a prisoner who is in for Redisseisin, the Sheriff shall be amerced, hic fol. 46.

So if the Sheriff or Gaoler shall suffer his prisoner who is condemned in arrerages before Auditors, to escape, or shall deliver him upon a Writ de Homine repleg' or otherwise without assent of his Master, the Sheriff or his Gaoler shall pay the Debt, hic cap. 21. & Dr. & St. 134.

Le Stat. de Westm' 2. cap. 11. *done action vers le Gaoler que lessa hors del prison cestuy que est commit a lui pur arrerages de accompt, Et per le Equity de ceo Stat. action de Dett gist vers chescun auter gardien sur chescun auter Condempnation in Dett, ou auter action, sils lessa le party committ al eux sur tiel Condempnation d' aler alarge,* Plo. 37. a. & 178. a Br. Parliament. 19.

Et si le Gaoler ou gardien n' est suffic' respondeat superior &c. *Issint que apres que tiel prisoner est un foits Escape, le Creditor ne unques demandra ses deniers de le party qui fuit in prison, mes vers le Gaoler ou Viscount.* Tamen *lofficer poet luy reprender apres.*

And if one in execution for debt be set at liberty, or suffered to go at large, by the Sheriff or other Officer, upon the commandment of any of the Kings Courts, without writ, this seemeth to be an Escape. See hic fol. 58.

Si un in execution pur det, soit suffer daler alarge per le vic' ou auter officer, sur commandment del Roy mesme, sans briefe, semble deste Un escape See Dyer 297. hic fol. 58.

A man in execution within the Cinque ports, was brought up to London, &c. upon a privy seal or the like, this is no Escape. 30. H. 6. fol. 6. Br. Escape 44.

A man is in execution for debt, and a woman being Warden of the Fleet marrieth the prisoner, this is an Escape, for that he cannot be his own prisoner, nor a prisoner to his wife. Pl. 36.

A woman is in execution for debt, and the Sheriff or Gaoler marryeth her, this seemeth to be an Escape

Le garden del Fleete less a son Office al un pur ans, & puis esteant en prison pur Dett en Londres, *& remove en Common Bank per* Habeas Corpus, *& la pur ceo Execution, & auxi pur auter, est commit al prison del Fleete, Et apres, Lessee pur ans surrender a luy, ou le terme finye, per ceo le Execution est discharge: uncore en le primer Case de Surrender, Dett gist (sur ceo Escape en Ley) vers le Lessee: Mes en l'auter case* quære *vers qu' laction de Dett serra. Issint lou un in Execution, & puis le Office (del Fleete) descend a luy, Ore est Hors de Execution;* tamen quære *sil serra pur ceo charge en Dett.* M. 29. Eliz.

Note that if a prisoner, being in upon an Execution, shall escape of his own wrong, without the consent of the Officer, there the Officer may take him again at any time, hic fol.

Note also that if a man who is in Execution upon a Statute, or Recognisance, shall happen of his own wrong to escape, yet the Sheriff may extend his Lands and Goods upon the same Statute, &c. 33 El. Also see Co. 3.44. & 5.86.

If the Sheriff shall seise any Land, or do many other things without Writ, Commandment of the Justices, or other lawful Warrant, he may soon bring himself into danger. See hic cap. 126. & cap. 6. 7.

If any Sheriff, &c. shall levy any of the Kings debts, without shewing to the parties the Estreats of the same under the Seal of the Exchequer, they shall lose to the party grieved treble damages, and also make fine to the King. 42 E. 3. c. 9. & 7 H. 4. cap. 3.

If any Estreat of Issues shall be gathered of any person, other than of such as by vertue of the said Estreats shall of right be chargeable, or charged therewith; the gatherer thereof shall lose five Marks to the party grieved, and five Marks to the King. 27 El. cap. 7.

3 E. 1. c. 19. A Sheriff who hath received the Kings debt, if at his next accompt he shall not discharge the Debtor, he shall pay to the Plaintiff thrice as much as he received, and also shall be fined to the King. See hic antea. *K. Debter.*

13 El. c. 6. If any Sheriff, &c. shall make any Warrant for the Arresting, Attaching, or Summoning of any person without an Original Writ, &c. they shall be committed without bail, until they have paid 10. l. to the party grieved, besides costs and damages, and also 20. l. to the King.

23 H. 6. c. 10. If any Sheriff, &c. shall omit any Arrest, or shall shew any ease or favour to any person Arrested or to be arrested (at any mans sute) for any Reward. *Arrest.*

Or shall take any fees, or other thing, for any Arrest, &c more than their due: See hic fol.

Or (upon any Arrest) shall take any Obligation by colour of their Office, but only to the Sheriff himself, and by the name of his Office, and upon condition onely to appear according to the Writ or Warrant;

Or shall detain any prisoner, or person by them Arrested, being baylable, after sufficient sureties offered:

Or if the Sheriff hath one in prison, or committed to him untill he do find sureties for the peace, or good behaviour, and he suffereth him to go at large before he be bound with sureties, &c. he shall forfeit 40. l. by the stat. of 23. H. 6. Cromp. 139. 140.

Or shall do any other thing contrary to the Statute of 23. H. 6. c. 10. in any point, they shall lose to the party grieved treble damages, and shall also forfeit for every such offence 40. l. to the King and Informer.

Action

Action sur le Case vers Powel *vic. & declare que le Plt. deliver* Capias *ad satisfac. al dit.* P. *vers* Owen, *Et que apres le delivery & devant le retorne del breife le dit* O. *fuit sovent faits en le company del dit* P. *il conusant le dit* O. *d'estre mesme le party, &c. Et uncore nemy ad luy Arrest, mes ad Retorne* Non est inventus, *Et fuit trove pur le Plt. Et per Cur. le Plt. ad deux Causes de actions vers* Powel, *lun le Non arrester, Et lauter le faux retorne de* Non est inventus. Hill. 15. Jacobi Regis.

If any Sheriff shall imprison any man for any matter inquirable in their Torn, except such as have been indited there by Enquest, &c. an Action of false Imprisonment lieth against the Sheriff. 13 E. 1. cap. 13. See the Statute 1 E. 4. c. 2.

If any Sheriff shall suffer any barrettors, or maintainers of quarrels in their County Courts, they shall be grievously punished. 3 E. 1. c. 32. See hic fol. 16.

If any Sheriff, &c. have arrested or imprisoned, or caused any fine or ransom, or amerciament to be levied of any person, by reason of any inditement or presentment made in the Sheriffs Torn, without Proces from the Justices of the Peace for the same first obtained, they shall forfeit one hundred pounds, &c. 1 E. 4. c. 2.

If any Sheriff (or his Deputy who keepeth the Sheriffs Torn) hath not brought in, or certified such inditements & presentments (taken in the Torn) to the Justices of Peace at their next Sessions, they shall forfeit forty pounds. Hic fol. 155. Ibid.

Justiciar' non potest puniri pro re per ipsum facta judicialiter, sed Officiarij ut vicecomes & alij Officiar' de recordo erunt puniti. 2 R. 3.

Action sur le case gist vers vic. & auters Officers de Record, sils font faux Record, Ou sils cause faux Entree d'estre fait, vel hujusmodi. 9 H. 6. Cromp. 122.

Issint si vic. fait faux Retorne. Co. 5. 32.

Sheriffs, &c. procuring, or soliciting sutes in their Courts, shall make fine to the King, and yield treble damages to the party grieved. 13 E. 1. cap. 36.

If any Sheriff, &c. shall enter into their books, any plaints (for debt, trespass, or covenant, &c.) in any mans name, not being present at the Court, either in his own person, or by his sufficient and honest Atturney or Deputy: 11 H. 7. c. 15.

Or shall enter any more plaints, than the Plaintiff supposeth that he hath cause of action for:

Or if the Sheriff shall suffer the Plaintiff to enter more than one plaint, for one trespasse, debt, contract, or cause:

Or if the Sheriff shall not cause the Plaintiff to find pledges to pursue his said plaint, sc. such persons as are known there in that County:

Or if the bailiff of the Hundred shall make default in Warning, or Executing any Warrant against any Defendant in the Sheriffs Court:

Or if the bailiffs, or other person shall gather the Sheriffs Amerciaments (or Shire Amerciaments) without a book or estreats Indented between the Sheriff, & two Justices of Peace, &c.

Or if the bailiffs, or gatherers of the Sheriffs Amerciaments shall take, or gather more mony than is forfeited and contained in such Estreats.

Every Sheriff, bailiff, and other officer, offending in the premisses, and being thereof lawfully convicted, &c. shall forfeit to the King forty shillings for every such default.

If any Sheriff, or any other, shall bail, or let any go at large

by

by surety, that is not bailable, if he be Sheriff, or Officer of the Fee, he shall lose his Fee and Office for ever! and if they be not Officers of the Fee, whosoever they be, they shall be fined by the Justices of Goal delivery. 3 E.1.c.15. 27 E.1.c.3. Fit.251.j. And by the statute of 23 H.6.c.10. the Sheriff bailing one who is not bailable, shall forfeit forty pound to the King, and treble dammages to the party grieved. *Bailement.*

If any Undersheriff or Bailiff, of such as have fee, for keeping of Prisons, do it contrary to their Lords will, Or any other Bailiff being not of Fee, they shall have three years imprisonment, and make fine, &c. Or shall not bail or deliver. Ibid.

23 H.6.c. 10. If any Sheriff, &c. shall detain, or shall not bail or deliver a Prisoner that is bailable, after that the Prisoner hath offered sufficient surety, he shall be grievously amerced to the King, by the statute 3 Ed.1.c.15. And by the former statute of 23 H.6. he shall lose treble dammage to the party, and forty pound to the King and informer.

And if any Sheriff, &c. shall take any reward for the deliverance of any such as are bailable, he shall pay double to the prisoner, and shall be in the mercy of the King.

If the Sheriff will not obey a lawful Supersedeas, but will arrest the party, &c. an action of *faux* imprisonment lieth, &c.

So if the Sheriff, (or other Officer) hath taken the party before the Supersedeas came to his hands, and then will not deliver him.

Sheriffs, and their Officers are also punishable for extortion in taking any fees more than their due, see hic fol. *Extortion.*

And if they take any fees, &c. contrary to the stat. of 23 H.6. they shall lose to the party grieved his treble dammages, and besides shall forfeit forty pound to the King, &c. Ibid.

Note that this Extortion in Sheriffs and other Officers is the greater offence, in that it is not only contrary to their Oaths, and so perjury in them, but also it is a kind of Robbery committed by them, by colour of their Office, and as a great loss to the Kings subjects (by them so wronged) as to steal their goods from them.

If an Officer cometh to a man, and telleth him that he is utlawed, when the Officer knoweth that he is not utlawed, and by colour thereof the Officer taketh his goods, this is Felony, by the opinion of Mr. Cock in his Reading.

So if the Sheriffs officer shall levy any duty for the King without warrant. Ibidem.

And yet there seemeth a difference where the Officer hath authority by reason or colour of his office, and exceeds his authority, there it is but extortion and fineable; as where the Sheriff or officer hath a precept to levy xx. pound of the goods of I. S. and he levyeth lx. pound, this is extortion: But where he hath no Authority it shall not there be intended that he doth that by colour of his office, but in such case it is Felony in the officer. Ibid.

And again this difference may be taken, sc. where the officer without Warrant or Authority shall levy any duty for the King, and shall after accompt for the same in the Eschequer, or otherwise pay the same to the Kings use, there the officer seemeth chargable but as a Trespasser; but if he shall convert the same to his own private, or proper use, there it is Felony.

Sheriffs ought to array their Pannels for the Assises, six days before, &c. sub pœna forty pound. *Juir.*

Also they shall deliver Copies indented of such pannels as they return for Trials, to each party demanding the same, upon pain of forty pound. See hic cap. 85.

If the Sheriff shall not return Pannels, as they be reformed by the Justices, they shall forfeit twenty pound. hic ibid.

If any Sheriff, or any of his Officers, shall return upon any Jury, any of their officers or servants, they shall lose to the party grieved treble dammages, and shall also forfeit forty pound to the King and Informer. 23 H.6.c.10. hic cap. 85.

If any Sheriff, &c. shall return upon any Jury, any person that is decrepit, or diseased; or such as dwell out of the County; or men insufficient, or laborers, &c. they shall yield dammages to the party grieved, and be amerced to the King: see hic cap. 85.

If any Sheriff shall return upon any Jury, any persons suspect and of evil fame, and be thereof convict, they shall be punished by the Judges of the Assise, &c. 20 E.3.c.6.

If any Sheriff, &c. shall take any reward to spare any Juror, or for not warning, or not returning of any person to be sworn as a Juror, &c. they shall forfeit five pound to the King and informer, 27 Eliz. c. 6.

If any Sheriff, &c. shall return any Juror without a true addition of his dwelling, &c. he shall forfeit five marks to the King, and five marks to the party grieved. 27 Eliz. c.7. vide hic c. 85.

They shall forfeit twenty shillings for every hundreder, if six be not returned, &c. hic cap. 85.

They shall forfeit five pound, if they take any reward, &c. to spare any Juror, hic cap. 86.

They shall forfeit twenty pound for not returning sufficient Jurors to enquire of Riots, hic cap. 87.

Issues. If any Sheriff, &c. shall levy any issues without warrant, &c. he shall yield treble dammages to the party grieved, and be fined to the King, hic cap. 90.

If the Sheriff, &c. shall return issues upon one who is not sufficient, he himself shall be charged therewith, see hic cap.

If the Sheriff, &c. shall return any Juror, or any issues upon any Juror, &c. who was not lawfully summoned, &c. He shall lose to the Juror double so much as the issues lost by such Juror, &c. hic cap. 90.

If the sheriff, &c. shall not return due issues upon every Juror, the sheriff shall forfeit five pound in some cases, and in some cases twenty pound, and in other forty pound, hic Retorn of Issues.

If the Sheriff, &c. shall levy any issues, other than of such persons as of right are chargeable, he shall forfeit five marks to the King, and five marks to the party, hic cap.

If the Sheriff, &c. shall return too small issues upon the Defendant; Or shall return no issues, he shall be amerced, &c. Fitz. Amercement 3. Br. 86.

Oaths. If any High Sheriff shall exercise his Office before he hath taken his Oaths, &c. he shall be fined in the Star-Chamber, and be imprisoned, &c. hic fol.

If any Undersheriff, or other the Sheriffs Officers, &c. shall exercise their offices, before they have taken their oaths, &c. they shall forfeit forty pound, &c. to the King and Informer, hic fol. 175.

If any Undersheriff, or other Sheriffs Officers, &c. shall do or commit any act or thing contrary to their oaths, they shall lose to the party grieved treble dammages. 27 Eliz. c. 12. hic 175.

If the High Sheriff shall not perform his Oath concerning

his

his office, it seemeth he is fineable in the Star-Chamber. See hic fol.

If any Sheriff shall let or farm his County, or any of his Bailiwick, he shall forfeit forty pound to the King and informer, &c. 23 H.6.c.10. [illegible] fol. Besides his danger to be punished in the Star-Chamber for perjury. *Their Office*

If any Sheriff, Under-sheriff, Sheriffs Clerk, shall abide in their Office above one year, they shall forfeit to the King and informer two hundred pound, hic fol.

If any Sheriff or Under-Sheriff, which hath been so by one whole year, shall be in that place again within three years next ensuing, they shall forfeit, &c. two hundred pound.

If the Sheriff be not resident within his County, he is punishable, except he hath the Kings Licence to that purpose.

If the Sheriff shall not appoint Deputies in every Court at Westminster, before he return any writ, he shall forfeit forty pound to the King, &c. and treble dammages to the party grieved. hic fol.

If he shall not appoint four Deputies (at the least) in his County to make Replevies, he shall forfeit to the King, for every month, &c. five pound, hic. fol.

If he shall not put in sufficient sureties (by Recognisance) in the Eschequer, &c. before he exerciseth any part of his Office he shall forfeit one hundred pound. See hic fol.

If he shall neglect to execute his office, by reason of resistance; Or shall return that he could not execute the Kings Proces for resistance, he shall be amerced, hic fol. 19. 136.

If the Sheriff shall not enter a Franchise to execute the Kings Proces, where there is default in the Bailiff of the Franchise, the Sheriff shall lose to the party grieved double dammages. See hic fol.

If the Sheriff shall not in every behalf execute the Kings Proces or other Warrant directed to him, he shall be punished. As

If the Sheriff shall remove a force, and shall not imprison the Offenders, here for not performing all which he is commanded by the writ or precept, he shall be punished. Cromp. 73.

If the Sheriff shall serve part of the Proces, viz. he shall distrein certain Jurors, and shall command the Bailiff of the Franchise, to distrein the other, he shall be amerced, for the commandment was entire. 19 H. 6. fol. 38. Vide hic cap. 39.

If the Sheriff shall do more than he is commanded by the Kings Writ, he is also punishable. Cromp. 74. & 162.

As if the Sheriff shall remove a force upon the writ of Northampton, and shall put the party (put out) in possession again, he shall be therefore punished in the Star-Chamber; for he had no authority by the writ but only to remove the force. ibid.

Also in divers cases if the Sheriff shall not execute the Kings writ, an Attachment shall go out against the Sheriff, which shall be directed to the Coroners of the same County, &c.

If the Sheriff, &c. or his Officers, shall distrein (for the Kings debt, or otherwise) any plow, cattel, or sheep: *Distres*

Or shall take any excessive distresses:

Or shall drive any distresses too far:

Or shall sell any distress (taken for the Kings debt) within fifteen days.

Or shall not shew, the Proces of the Eschequer, for the levying of the Kings debt, upon demand.

Or shall not deliver the distress, the party offering sufficient sureties, &c. before the return of the writ:

In all these former cases the party (as it seemeth) may have an attachment upon the statutes, or else an Action of Trespass, against the Sheriff, or Officer. See hic fol. 23.

If the Officer upon a Replevy shall take one mans Horse, Bullocks, or other thing for anothers, he is a Trespasser, hic fol.

If the Sheriff, &c. shall make Replevy of any goods, or cattel, and shall not take pledges, de prosequendo, Ac de returno habendo, &c. he shall answer the price, &c. hic & Fitz. Amercements fol. 2.

If the Sheriff, &c. shall seise the Lands, or Goods of one man for another man, &c. the party grieved shall recover double dammages, hic 36. Br. Officer. 8. & 10.

If the Officer upon a Fieri Facias shall deliver in execution, any goods which are not the proper goods of the Defendant, he is a trespasser, &c. hic fol. 58.

If the Sheriff, &c. shall arrest or attach one man for another, he is a trespasser, &c. hic fol. 47.

If the Officer shall arrest one without a warrant, though after he hath a warrant, &c. yet he is a trespasser, hic fol. 47.

If the Officer shall arrest any Minister in the Church, &c. he shall be imprisoned, and yield recompence to the party, hic fol. 48.

Note, by a late statute, no arrests are to be made upon a Sunday, under very severe penalties.

If upon an arrest to be done, the Sheriff or his Officer shall take any thing to omit the Arrest, or otherwise not to do their duty, they shall forfeit forty pound, and shall yield to the party grieved treble dammages. 23 H. 6. c. 13.

Every Knight of the Parliament, Burgess, Baron of the Cinque ports, and other persons called to the Parliament shall have the priviledge of the Parliament during the Sessions of Parliament; so as whosoever shall arrest any of them during that time, shall be imprisoned in the Tower (by the Neather House whereof such person is, &c.) and shall be fined: And the Sheriff, Goaler, or other keeper, &c. shall also be imprisoned and fined, if they shall not deliver him, when as a Serjeant of Arms shall come for him by the commandment of the House. Dyer 61. Cromp. *Author des Courts* 9. 10.

And yet if one that is utlawed shall be of the Parliament House, and a Capias utlagatum be sued out against him, and delivered to the Sheriff, he may safely arrest him thereupon; for this writ is, quod non Omittas propter aliquam libertatem, So that the party utlawed cannot be discharged thereof by any liberty or priviledge (for he which is out of the Law, and out of the protection of the Law, cannot have the Priviledge of the Law.) But a person priviledged by being of the House, cannot be arrested by a writ or upon a writ of execution, or the like. Per Anderson & Periam Justices Ter. Hill. 31 Eliz.

If the Officer shall not arrest a man when he may (he having warrant therefore) an action of the case will lie against him, and the party grieved shall thereby recover in dammages all that he shall lose through such default of the Officer, hic fol. 123.

Also the Sheriff shall be punished for his delay, in not executing of proces delivered to him, &c. hic.

If upon a Capias ad respond. the Sheriff shall arrest the body but returneth not the writ, the party arrested may have his action of false imprisonment against the Sheriff. And if the Sheriff shall return the writ but shall not bring in the body at the day, then he shall be amerced. Kiel 3. hic cap. 37.

So

Br. Officer 40. 13 E. 1. c. 39. Fitz. execution. 248.

So if a man be taken upon a Capias, and yet the Sheriff returneth, non est inventus, an action of false imprisonment lyeth against the Officer that took or arrested him. *Retorne.*

Also upon a writ directed to the Sheriff upon the statute of 31 H. 6. cap. 9. for the inforcing of women to enter bonds, &c. if the Sheriff shall not duely execute the same, he shall forfeit three hundred pound. See the statute at large. & P. Women 15.

Note, that the Sheriff ought to execute the Kings writ at his peril, although resistance be made, otherwise he shall be grievously amerced, And besides the party shall have his action against him, if the writ be not executed, for he might have taken the power of the County to have aided him, &c. See hic 16. 65.

The Sheriff shall be amerced, for not returning, misreturning, or false returning of a writ. See Fitz. Amercement. 4. & 18. 5 Eliz. 23. & 6 R. 2. cap. 4. & hic fol. 44. 50. 70. 71. Dyer. 198. Co. 5. 90.

Also an action of the Case will lye against the Sheriff if he shall make a false Return, by Roads Justice anno 28 Eliz. with whom agreeth the Book of Entrees, tit. *Accon. sur le Case in Retor. div.* 1. & 2.

Or the Sheriff, for not returning, misreturning, or false returning of a writ, may be indicted. See Fitz. Just. of Peace, fol. 67. The form of an Indictment against the Sheriff, for returning, quod Nihil habet, ubi pars sufficiens est.

Also in the Registr. par. 2. fol. 31, 32, 67, & 82. you shall find several writs (directed to the Coroners) ad Venire facias vicecomitem, ad respondendum, Quare non returnavit brevia; or ad respond. de falso retorno, or super retorno Tarde, &c.

He shall be amerced for imbeasting the writ; or for returning of another which was not the writ. Fitz. Amercement. 5. Disceit. 11. & Br. Amerc. 45.

The Sheriff imbeasled an Exigent which was delivered to him of Record, and wrote two others, and returned them without sealing, and for this faurity he was amerced at 100. pound. 5 E. 4. Br. Retur. 95.

A Sheriff returning a Mandavi ballivo libertatis, where there is no liberty, he shall be punished as a disinheriter of the King. hic fol.

A Sheriff maketh his warrant to one which is not Bailiff of the Franchise, &c. he shall be amerced. 38. Ass. 13.

A Sheriff maketh his precept ballivo Libertatis, where the King is a party, he shall be amerced.

If a writ de Excom. capiendo (being delivered of Record to the Sheriff or to his Deputy in Court) shall not be duely returned; or that by any other negligence or default shall be used in not well serving and executing the same writ, Then the Justices shall assess such amercement upon the Sheriff, as to the said Justices shall be thought meet, &c. 5 Eliz. c. 23.

And if the Sheriff maketh a false return upon any Capias in a writ of Excom' Capiendo, &c. he shall forfeit to the party grieved forty pound, hic cap. 36. 5 Eliz. c. 23.

The Sheriff amerced at fifty marks for his false return of an Exigent, hic 75.

A Sheriff was fined at forty pound by the Justice of Nisi prius, for not returning the writ de Habeas Corpora Jurator. &c. 20. H. 6. fol. 33.

But upon a writ to enquire of dammages, if the Jury will find no dammages, and the Sheriff returneth accordingly, though such return be not good, yet the Sheriff shall not be amerced for this default of the Jury. Br. Retorn. 20. Fitz. Retor. 66.

Sheriffs

Sheriffs misreturning, or not returning any writ, to them directed and delivered, concerning the levying of the Kings debt, rents, revenues, or issues, &c. they shall pay such fines and amerciaments, as shall be assessed upon them by the chief Officers of the Kings Courts of Revenue, &c. 7 E. 6. c. 1.

A Sheriff returneth a writ without setting his hand thereto, he shall be grievously amerced, hic fol. 74.

Sheriffs shall be amerced for the default of their Under-sheriffs, or Bailiffs, in making false, or insufficient Return. See hic titulo retorne fol.

Sheriffs not making due election of Knights for the Parliament, or returning Knights, &c. of the Parliament falsly, or contrary to the statutes, shall be imprisoned for one year, without bail, and besides shall forfeit to the King one hundred pound, and to the party chosen Knight, &c. and not returned, another hundred pound, hic 131.

Sheriffs not attending the service for the Assessing of wages of the Knights of the Parliament shall forfeit xl. s.

If they shall not Assess every Hundred, and Town, thereto according to the statute; they shall forfeit thirty pound.

If they shall levy upon any Town, more than is so Assessed, they shall forfeit thirty pound.

So if they shall not deliver the same, &c.

Sheriffs shall be punished in the Star-Chamber for their untrue demeanings in making of Pannels, and other untrue Returns, or for taking undue Fees, or Bribes. 3 H. 7. cap. 1. P. Courts 4.

If the Sheriff upon Request, shall not aid, and assist him from whom any Cator, of any Noble man, or other subject, shall take any Goods, or Carriage against the will of the Owner, the Sheriff shall forfeit to the King, and party grieved, &c. xx. pound. hic fol. 15.

If the Sheriff or Under-sheriff shall not joyn with the Justices of Peace, in executing the statute of 12 Hen. 4. against Rioters, &c. to arrest the Rioters; to make a Record of that which they shall see so done; and to imprison the Offenders, they shall forfeit one hundred pound. hic fol. 15.

If the Riot cannot be found by the Justices of Peace, &c. then within one month the Justices of Peace, and the Sheriff or Under-sheriff, shall certifie the fact and circumstances to the King, &c. upon pain of every of them to forfeit one hundred pound. hic fol. 15, 16.

If the Riot be not found, by reason of any maintenance, or embracery, &c. Then the Justices and Sheriff or Under-sheriff, in the same Certificate, shall also certifie the names, and misdemeanors of those maintainers and embracers, upon pain of every of them making default to forfeit xx. pound. hic fol. 15.

Sheriffs which shall not Arrest all persons that ride, or go armed, &c. shall be punished by the Justices of Goal delivery, &c. hic fol. 2 E. 3. c. 3

If the Sheriff shall not execute the Precepts of Commissioners of Sewers, &c. they may assess and impose fines, &c. upon the Sheriff. hic fol.

Servants and Labourers departing into other Shires, if the Justices of Peace do grant out any Process against them, the Sheriff is duely to execute such Proces upon pain of xx. pound. 2 H. 5. c. 4.

If the Sheriff shall not duely execute all Proces and Precepts, as shall come to him from the Justices of Peace, he is punishable, &c. See hic 144.

Note

Note that the Justices may commit the Sheriff to prison for an offence done before them, and they may make or appoint another Officer (for the time) to keep him. Martin. 8 H.6.60.

A Bailiff being indicted of extortion, his Rod was taken from him, and he was committed to Prison without bayl, &c. 42. Ass. p. 5. Br. Commiss. 15.

Sometimes the Sheriff or other Officer shall be punished for executing their Warrant.

As where the Court (out of which the process or warrant shall come) hath not jurisdiction of the cause, and yet shall grant out Process, &c. and the Sheriff or other Officer shall execute the same, they are punishable. See hic fol. 45, 46.

If the old Sheriff, after that he is discharged, shall make his warrant to arrest another, and the Bailiff shall execute this, a writ of false imprisonment lieth as well against the old Sheriff, as the Bailiff which executed such his warrant, &c. hic fol. 9. & 47.

Where th[e Sheriff shall be amerced or fined] to the King, and also subject to the Action of the Party; and so twice punished for one default.

If the Sheriff (upon a Capias ad satisfac': or upon the Exigent) returneth Cepi corpus, and yet hath not the body at the day, he shall not only be amerced, but the Plaintiff also may have an Action of deceit against the Sheriff, by an original writ; or else the Plaintiff may sue against the Sheriff in the Eschequer upon his accompt. Br. Retorne 31. & 107.

The Sheriff upon a Fieri facias returned quod fieri fecit x. l'. parcell' de xx. l' in breve specificat', &c. And at the day had not the money, there the Court might amerce him, and besides after a new Sheriff was made, a Scire facias went out to the new Sheriff, against the old Sheriff, to have execution against him, &c. 9 E. 4. Br. Retorne 55.

If any writ shall be delivered to the Sheriff, &c. And the Sheriff shall make return thereof, but shall not summon or warn the Defendant; Or otherwise shall not serve the writ as he ought, by reason whereof the Plaintiff or Defendant shall be in any sort dammified, he shall be amerced, and besides the party grieved may have their action of the Case, &c. against the Sheriff.

If any Sheriff or his Officer (by colour of his office) without special warrant, &c. shall disseise any man of his freehold, the disseisee may have his writ of Novel disseisin, where he shall recover double dammages, and besides the Officer shall be grievously amerced to the King. 3 E. 1. cap. 24.

Note that the words of this statute are, Colore Officii, For there is a difference to be holden, where the Sheriff shall do a thing Colore, or virtute Officii, and where virtute brevis; for where he doth a thing virtute brevis, that is a sufficient warrant to him, and which he is bound to obey, Otherwise it is where he shall do it Colore Officii: per Choke 7 E.4.17.

So where the Sheriff shall do a thing by the commandment of the Justices he is excusable. Fitz. Assise 373.

Mo:

Mes si le vic. seise ters sans brief, ou Office, semble que il est disseisor sur ceo statute de Westm. 1. cap. 24.

Issint sur Office trove nient suffic. Come lou les quantities del ters ne sont express, Ne les services per queux sont tenus, si le vic. seise tiels ters, sur tiel insufficient Office, dicitur que il est disseisor; mes si le insufficiency soit per default de forme, auterment est.

Si breif vient al vic. dextender ters in A. *& il extend ters in* B. *il est disseisor.* Vide Fitz. verdit. 29.

Issint si brief vient a deliver ters que discend, & le vic. livera les ters purchase. Fitz. Assise 378.

Issint si brief vient de Extender ters queux fuer al A. *& il extend les ters queux le feme* A. *ad in Dower, Et as queux el avoit title de Dower devant le Extent, le vic. est dissor.*

Vide Fitz. Assise 162. *le Officer adjudge dissor que liver le terr per garrant sans nosmer cey que recover.*

Si un soit Endite de felony devant le vic. (en son Torne) per que le vic. seise son terr, & apres est trove devant le Justices que il ne fait le felony, le vic. est disseisor.

Si apres plen remove Hors del County Court, le vic. voile proceeder in ceo & agard Execution, il est disseisor. Fitz. *Action sur Case.* 39.

A man was indicted before the Sheriff (in his Torn) whereupon his Lands and Chattels were seised by the Sheriff, and by Devon, the Sheriff had no Warrant by the inditement to seise the Lands, and therefore advised the party to bring his Assise, &c. Fitz. Assise 373.

And therefore Sheriffs before they seise any mans Lands, must have good warrant, or cause so to do. Vide hic fol. 19. 25.

Vide plus. Br. *Action sur le Case.* 48. 51. 53. & 121. & hic fol. præcedente.

CAP. 123.

Where the Sheriff for his Default shall be subject to the Action of either party, *sc.* of the Plaintiff and Defendant.

If the Sheriff taketh one upon a Capias, and returneth not the writ, the Plaintiff may have his remedy by force of the statute 13 E.1.c.39. and shall recover his dammages, And the Defendant may have his action of false imprisonment. hic 70.

So if the Sheriff, &c. arrest one upon a Capias and after returneth Non est inventus.

Upon a Fieri facias the Sheriff levieth the money, but neither returneth the writ, nor payeth the money to the Plaintiff, here the Plaintiff may charge the Sheriff in an action of accompt, and the Defendant in an action of trespass. hic 70.

If any Sheriff, &c. shall return upon any Jury, any persons which are not sufficient, &c. Or contrary to the statute, the Sheriff shall be subject to the Actions of the parties Plaintiff and Defendant, as also of such Jurors so returned. hic 120. 121.

CAP. 124.

Where the new Sheriff shall have an Action against his Predecessor for his false Return.

The old Sheriff returned a Venire facias Jurat', and then was discharged, and Proces continued to the distress, and the new Sheriff returned upon a Juror, Nihil habet, and was therefore amerced, for that he ought to have pursued the first return of his Predecessor, and to have shewed the special matter, &c. And therefore if the Juror were not sufficient at the first, the new Sheriff shall have an Action of deceipt against his Predecessor. 19 H. 6. Br. Retorne 49. See plus Br. *Action sur le case*. 53.

Where the Lord or Bailiff of a Franchise, shall have their Action against the Sheriff. See fol. 72. 73. 181.

CAP. 125.

The abuses practised by some Sheriff, Under-sheriffs, and Bailiffs.

Sheriffs have obtained often times upon their accompts, outragious allowance, under pretence of the Kings works and businesses. Stat. 51. H. 3. *Accompts*

They have (for reward, prayer, fear, or affinity) concealed Felons: Or have neglected to attach them. 3. E. 1. c. 9. *Felons.*

They have procured Prisoners to become approvers, &c. to appeal harmlesse and guiltlesse people of felonies; thereby either to get ransom of such appealed persons, for fear of imprisonment; Or else out of malice, or other cause: See the statute 13. E. 1. cap. 12. & 1. E. 3. cap. 7.

They have feigned persons to be indicted of Felonies or other Trespasses in their Torns, and have imprisoned them, and have exacted money from them, by colour thereof. 13. E. 1. cap. 13. *Feigned Indictments.*

They have procured Commissions and general Writs, and by colour thereof have made, and taken divers Enquests, and indicted people at their will, And then have taken fine and ransom of them to their own use, & so delivered the persons indicted, not bringing them before the Kings Justices, &c. 28. E. 3. cap. 9.

They have solicited and procured sutes in the County Courts, compelling thereby poor men, &c. to follow their Courts, untill they have made fine with them at their wills. 13. E. 1. cap. 36. *In their Courts.*

11 H. 7. c. 15. They have used to enter in their books more plaints than the plaintiff supposed he had cause of action for in their County Courts.

And also more plaints that one for one debt, trespasse, contract; or cause, to the vexation of the subjects.

Ibid. Also many times in plaints entred before them in their Counties, the defendants are never attached, summoned, or warned, and so for want of knowledge of such sutes against them the defendants are unjustly punished and vexed.

They have used to enter plaints in their said Courts, in the names of persons that were dead.

At this day they use in their said Court, that if the Deff. be summoned, and thereupon maketh default of appearance presently to grant out a Levari facias, to levy the Dammages, and Costs, &c. whereas they should continue the Proces against the Deff. untill he appear, sc. a Distress infinite (hic cap. 12.)

And the Levari fac' ought not to be granted out untill the matter be found and adjudged against the Deff. and not upon his default.

Also upon the Levari fac' the Sheriff or his Bayliffs do use to sell the goods so levyed, whereas the Execution in this Court is only to distreyn the goods of the Deff. and to put and keep them in pound, &c, untill the debt be satisfied. hic cap. 12.

They have taken fines of the parties, for not pleading well, &c. Fitz. 270. 52. H. 3. 11.

Bailment. They have bayled persons not bailcable, whereby notable Felons and Offenders have escaped.

They have kept and detained in prison persons bailcable, only to grieve or vex them, Or else to gain and get mony of them. 3. E. 1. cap. 15.

They have sent strangers to take distresses (whereas none but Baylifs sworn and known ought to take distresses) thereby grieving their neighbors, and exacting money of them thereby. 13. E. 1. c. 37.

Juries. They return men upon Juries, which are decrepit, diseased, and dwelling out of the County;

And sometimes they return an unreasonable number; hic fol. 122.

And usually they return men of the poorest and meanest sort, least able to discern the causes in question, and most unable to bear the charges of attendance, sparing, and letting the rich men, and most able and sufficient Freeholders to abide at home; and all this they do to get money and bribes.

And whereas in any Issue joyned for the tryal of any matter above 40. s. the Jurors ought to have land, &c. to the yearly value of 40. s. whereof four must have lands, &c. to that value in that County; The Sheriff notwithstanding (if they favour not the Plaintiff) will return such Jurors as shall not have 40. s. in the Shire; or else such as shall not have 40. s. in the Hundred; or such as are Cosins to the Deff. or Plaintiff; or within the Distress of the Deff. and Plt. And these are great mischiefs; for the party can not have proces against other Jurors; Nor he can not challenge any for the causes aforesaid, until the Jury do appear.

They often return upon Juries, persons suspect, and of evil fame: and some times persons nominated to them; taking gifts and rewards for such purpose.

They have returned upon Juries their Officers, and servants.

Auter Abuses de Sheriffes in Iour Retornes.

Nota que in divers breifs the Sheriff will set forward whose suit he pleaseth: And put back and delay such as ought lawfully to proceed. *Come* in a writ of Summons, *les paroles sont,* Si. T. B. fecerit te securum de clamore, &c. tunc Summon. per bonos Summonitores, &c.

Here

Hereupon if the Sheriff favour not the demand. He will return,

1. *Q'le demandant n'ad trove Pledges de persue le Suite: Et pur ceo le briefe est perde* Ou *il ne retorne.*
2. *Forsque un Pledge; Et ce est Error si le demandant proceede.*
3. *Q'le demandant, ne nul pur luy ad monstre a luy le terr' in demand, que est suppose destre in* B. *Et que la est nul tiel ville ne hamlett.*
4. *Q'le tenant est mort.* Or Istud breve mihi venit adeo Tarde, &c.
5. *Q'auter home est tenant del terr', &c.*
6. Mandavi ballivo libertatis, qui nullum dedit responsum, &c. Or, Tarde, &c.
7. ——— *Et nota, que per ceux faux Retornes, le demandant ad petit remedy, come le vic. poet estre amerce pur ceux.* Hic cap. 20. 37.

And as the Sheriff may make these Returns, and such like, upon the first Writ (sc. *sur le Original*) so may he do upon any other Writ of what nature of action soever it be.

2. *Lou sur le Original breife le vic. retorn le deff. Summon per common Summons, lou in verity il ne fuit unqs Summon, Si le tenant fait default al jour del retorne il perder ses ters sans ascun remedy: car il ne poet aver action de Disceit vers les Summoners, Car nul tiel* in rerum natura; *sans que nul trial poet estre in le action.*

3. *Lou per le Ley, in personal actions, chescun home que ad ters in le County lou l'action est port, al value de* 40. *s. doet estre retorn sufficient, Et la sur proces de Distress d'estre agard sur son default, Si n'ad ters le vic. est de retorn luy Nul. Uncore si le vic. ne favor le plt. il voet retorn le deff. suffic. (lou ad nul terr') Et donque le plt. poet aver nul Proces de Utlary vers le deff. Et sic le plt. est sans remedy; E que il que n'ad ters ne care pur le loss de Issues.* Ac è contra *le vic. poet retorn le deff. nil lou il ad ters suffic. sil intend de vexer le deff. vel pur arrest de son Corps, ou dammage de Utlary; Et le party ad nul remedy, mes un action sur le case vers le viscount.*

4. *Sur le* Capias, *si le vic. retorn* Non est inventus, *coment que le deff. soit dayly en son company, le plt. ad forsque petit remedy.*

Uncore 5 E. 4. & 7. Ed. 4. 31. *Le plt. poet aver action sur le Case, pur nient arrester lui, lou il puissoit.*

Se le vic. arrest le deff. Et retorn Non est inventus, Action gist. 13 H 6. 3.

5. *Si apres arrest fait, le vic. retorn Rescous fait per certain persons le deff. (sur tiel Retorne) fera fine: ou estre utlage, & cest* tantum *pur cest faux retorne.*

Their Bailiffs often times do warn men to appear upon Juries, without any Warrant from the Sheriff: And this they usually do to such as will not send to, or meet at, their Feasts, or otherwise bribe them.

Sometimes also they summon or warn men to appear upon Juries, and yet do not return their names.

They are slack in arraying their Pannels; or delivering Copies thereof.

They extort and take undue fees. See the Stat. 23 H. 6. 8 9. & 11.

7 H. 15. c. 7 They levy more than is contained in their Estreats. 11 H. 7. c. 15. *Extortion.*

They levy Issues double, sc. the same Issues of divers persons, being of one name, &c. 27 Eliz. 7.

They levy the same issues, fines and amercements, of the same men two or three times. 7. H. 4. cap. 3.

They receive the Kings debts, but discharge not the debtor.

Under-sheriffs, (and other Sheriffs Officers) usually practise as Atturneys.

They also continue in their places many years together: both which are contrary to the Laws; And besides by reason thereof the Kings subjects dare not pursue them, nor complain of their extortions and oppressions.

Arrest. They Arrest men sometimes without any Warrant or Proces.

Sometimes they make Warrants, &c. without any Original.

They wilfully omit to arrest one when they may.

After arrest, (for bribes) they shew favour; Or wilfully suffer the party to escape.

Upon a Capias utlagatum, if they take the defendant, they often take money of him, and so let him go again, when they have also formerly taken money of the Plaintiff to take the Defendant.

The like they will do, when they have taken one upon a Capias ad satisfac' or other execution, &c.

And so both the King, and the subjects are thereby much wronged.

They are slack in Returning of Utlawries, concealing the same.

The Bayliffs do often gather up divers duties upon the Under-sheriffs Warrants directed to them; and do purse up the same; so as the same duties are many times demanded again of the parties, in another Sheriffs time: And therefore it shall be safest for the parties, not to pay such duties to the Bailiffs, but to the Under-sheriff himself, and to get his acquittance upon the payment thereof.

Lastly, the King is many times much deceived and wronged between these Under-sheriffs, and the Bayliffs, of all his waiffs, straies, felons goods, outlaws goods, amercements, fines, and other proffits due to the King; which many times are by them either taken up and imployed to their own use, Or secretly compounded for, but never accompted for.

But for the manyfold wrongs, slights, extortions, oppressions, and other abuses practised, especially by some Under-sheriffs and Bailiffs, I must confess my reading title, and my experience less able to discover them: And if any well experienced Under-sheriff (out of his love to the common good of the Country) would put his helping hand, not only to the further discovery of the foul abuses practised in his kind, but also to the further perfecting of this whole Book, it would be gratum opus.

Deus

Minimus Magnus.

Vicecomitis Officio Supplementum.

AN

APPENDIX

OR

SUPPLEMENT

By way of Addition to, and Amplification of the Learned

TREATISE

OF

MICHAEL DALTON Esq;

Touching the

OFFICE and AUTHORITY

OF

SHERIFFS:

CONTAINING

A Collection of the Statutes relating to Sheriffs made since Mr. *Dalton's* Writing, which are in Force and Use at this day; several special Returns of Writs, and the Expositions, Judgments, and Resolutions of the Reverend and Learned Judges in the several Courts at *Westminster*, upon divers Statutes, Cases, and Questions in Law, concerning Sheriffs and their Officers, and several other new Matters.

With a New and Copious TABLE to the whole Book; wherein the Defects and Imperfections of the Old Table are supply'd and amended.

LONDON,

Printed *Anno Dom.* 1681.



TO THE

READER.

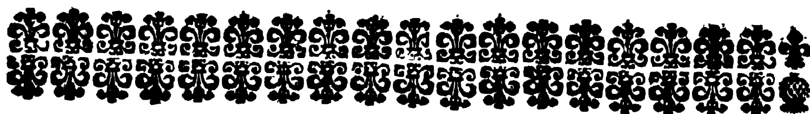
READER,

Since the time wherein the Learned and Judicious *Michael Dalton* Esq; Collected that laborious Treatise, Intituled *Officium Vicecomitum*, several Acts of Parliament have been made (whereby Sheriffs are either enjoyned the performance of new Matters, or eased in something wherein before they were burthened,) and divers Expositions, Resolutions, and Judgments, have been given in the several Courts of *Kings Bench*, *Common Bench*, and *Exchequer*, by the grave and Learned Judges of the same Courts, upon divers Statutes, Cases, and Questions in Law, concerning the Office and Duty of Sheriffs and their Officers. I have endeavoured to Collect them together out of the many Volumns of the Law, and put them under proper Titles, for the ease, benefit, and profit of the Gentry of this Land (on whom the burthen of this Office lieth;) but especially of the immediate High-Sheriffs, and Under-Sheriffs; who by their diligent perusal, and careful observation of the whole Matter of this and the former Treatise, may be directed to run through their several Offices without hazard to themselves, or oppression of the People.

The

The new Matters are added by way of Supplement: And to the end the Matters in the whole Book may be easily and speedily found out (many of the useful Matters in the foregoing part being either difficult to find, or wholly omitted out of the old Table) I have compiled a new Table thereunto, & have added therein the Matters comprised in this Supplement, putting both together under one and the same respective proper Titles. And for distinction, whereby the Matter in this Supplement may be known from the rest, I have put this Mark (*) to it throughout the Table. Such as it is I commend to thy Reading and Practise, and leave to thy favourable Construction, presuming that as well this, as what Mr. *Dalton* hath before Written, may tend to thy use and benefit, and the publick good; which is all I desire.

Farewell.



CAP. 1.

Account.

SECT. 1.

Statutes made since Mr. *Daltons* time touching Sheriffs, which are in force and use at this day.

22 Car. 2. By the Statute against Conventicles, 22 Car. 2. It is amongst other things Enacted, That the monies levied upon Offenders against that Statute, shall be paid into the hands of the Justice or Justices of the Peace, who gave the Warrant or Warrants for levying the same to be by him or them distributed, one third part to the use of the Kings Majesty his Heirs and Successors, to be paid to the High-sheriff for the time being, in manner following, (viz.) The Justices of Peace shall pay the same into the Court of Quarter-Sessions, which Court shall deliver the same to the Sheriff, and record the delivery thereof; which Record shall finally discharge the said Justices and charge the said Sheriff, which charge and discharge, shall be certified into the Eschequer together and not apart. *The Kings moneys levied upon this Act shall be paid to the Justices of Peace, and by them to the Quarter-Sessions, and from thence to the High-sheriff.*

SECT. 2.

Sheriffs eased in their Accompts, and in their Tables and Servants in time of Assises.

14 Car. 2. 21. By the Stat. 14 Car. 2. c. 21. It is ordained that no Sheriff of any County or Shire within this Realm, shall in the time of Assises, held for the said County or Shire during his Sheriffalty, keep or maintain, or cause to be kept or maintained, any Table or Tables for receipt or entertainment of any person or persons resorting to the said Assises, other than those that shall be of his own family or retinue; nor shall make or send in any Present to any Judge or Judges of Assise for his or their provision, Nor *Sheriffs to keep no Tables in the time of Assises.*

Sheriffs not to have above 40. nor under 20. Men-servants at the Assises, except Sheriffs in Wales, & there not under 12. Men-servants. Penalty 200 l.

give any gratuity to his or their Officers or Servants, or any of them; And that no such Sheriff shall have more than forty Men-servants with Liveries attending upon him in the time of the said Assises, nor under the number of twenty Men-servants in any County whatsoever within the Kingdom of England, nor under the number of twelve Men-servants in any County within the Dominion of Wales, upon pain that every Sheriff offending in any of the premisses shall forfeit for every default two hundred pounds:

Proviso touching London, Middlesex, Westmerland, and Sheriffs of any City and County, or Town and County.

But by Proviso in the same Statute nothing therein above-mentioned shall extend or any way concern the Sheriffs of London and Middlesex, the Sheriff of Westmerland, or any Sheriff of any City and County, or Town and County, within this Realm, but that they shall or may do, as heretofore hath been there used and accustomed.

Sheriffs eased in passing their Accompts in the Exchequer. Seisure of lands remaining charged Michaelmas 1660.

And for the future ease of Sheriffs in the passing their Accompts in the Exchequer, It is by the same Statute enacted and declared, that every seizure for or concerning any lands, tenements, and hereditaments then remaining charged in the forein Accompt of any Sheriff in England, for the year 1660. shall be from the said forein Accompt charged particularly in the great Roll of the Exchequer; and that the respective Remembrancers of the said Court do forthwith, and so, from time to time for the future, make perfect

Remembrancer shall make copies of seizures & inquisitions.

Copies of every such other seizure and inquisition as then were or thereafter should be certified into their respective Offices, without certifying the Copy of the Writ or Commission at large, upon which such seizure and inquisition is or shall be taken or returned,

Writ or Commission shall be recited only in brief.

mentioning only in brief, the date of the said Writ or Commission, and shall deliver the said Copies truly examined and attested under their hands to the Ingrosser of the said great Roll, and that

Seisures taken or returned shall be delivered to the Ingrosser before the next Term.

all such seizures as shall be returned or certified into any their respective Offices shall be delivered, so examined and attested, to the Ingrosser before the first day of the next Term, after the Remembrancers receiving of the same, so as the same may be charged in the great Roll; to the end that Process of the Court may thence issue for levying the issues and profits, for the use of the Crown; The

Fees to the Remembrancers.

Remembrancer shall be paid for every sheet, writ and delivered, 8d. to be paid by the Sheriff, who shall be allowed the same upon his

Sheriffs shall not answer illeviable seizures, farms, rents, &c. nor others, which are not in Process and plainly exprest.

Accompt out of the profits arising by such seizures; and no Sheriff in England shall be charged in Accompt to answer any illeviable seizure, farm, rent or debt, or other seizure, farm, rent, debt, matter or thing which was not writ in Process to be levied: wherein the persons of whom, or the lands or tenements, out of which together with the cause for which the same shall be so levied, shall be plainly and particularly expressed; But shall be thereof wholly discharged without petition, plea, or other trouble or charge whatsoever.

Seisures before the first of K. James, and divers others to be left out of the Sheriffs Accompts.

And that all seizures made before the first year of the late King James, remaining in the Accompts of the Sheriffs, and all seizures and debts which are pardoned, are fully discharged, and shall be left out of the Sheriffs Accompt without further order, plea, petition or other charge, and that no Process shall issue for levying the same, or for any other rent, or farm which cannot be explained by setting forth the particulars thereof, or which have been un-

answered

answered forty years: And that all other dead farms and seizures, and all desperate illeviable and unintelligible debts shall be removed out of the Annual Roll, and Sheriffs charge into the Exannual Roll, there to remain till by Commission, they shall be revived and made answerable.

And to the end that all new debts arising and coming into the Exchequer for the future may be sent forth in Process in convenient time. It is thereby further enacted and declared that the said several Remembrancers do forthwith inroll and certifie to the said Ingrosser of the great Roll, all such debts as any Sheriff or Sheriffs of this Realm are or hereafter shall be charged withal, either by virtue of their respective returns made to the Barons of the said Exchequer upon his Majesties Writs of Fieri facias, Levari facias, Capias, or other Process: And also of all fines and amerciaments, which are and shall be set and imposed by the Court of Exchequer, upon any Sheriff or Sheriffs for his or their contempts or neglects (that is to say) that all and every such debts, fines, and amerciaments, as then were returned, set or imposed in any of the said Offices should be delivered as aforesaid, before the first day of February then next, and all afterwards by the first day of the next Term after such retorns made or such fines or amerciaments set or imposed, that so they may be charged in the respective Sheriffs Accompts, and comprehended within their respective Quietus est, upon pain that every Officer or Officers in the said Exchequer, who shall in any thing offend contrary to the said Statute, shall forfeit 40 l. for every such offence, one moiety to the King, &c. and the other moiety to the party agrieved, to be recovered by Action of Debt, Bill, Plaint, or Information, in any of his Majesties Courts at Westminster, wherein no Essoin, Protection, Priviledge, or wager of Law shall be allowed;

Process for debts to be sent forth in convenient time.

Penalty upon Officers for doing any thing against this Act

9 E. 2. St. Lincoln. 4 E. 3. cap. 9. 5 E. 3. cap. 4.

And it is thereby further ordained that no person shall be assigned Sheriff of any County within this Realm, but such as have Lands within the same County sufficient to answer the King and his People.

Sheriff shall have sufficient Lands within the County.

21 Jac. cap. 5.

And whereas by an Act made in the 21 of K. James, It was provided, That whensoever any Sheriff upon passing his Accompts should have his Quietus est, that he should be thereby absolutely discharged of all sums of money by him levied and received, and pretended not to be accompted for within the said Accompt, whereupon he had his Quietus est, unless such Sheriff should be called in question for such sums of money so pretended to be levied and not accompted for within four years after the time of such Accompt and Quietus est, Notwithstanding which Act, divers Sheriffs and their Heirs upon such pretence have been molested and troubled many years after their Accompts and Quietus est, and have had Process sent out against them contrary to the said Statute, It is therefore thereby further Enacted, That when any Sheriff or Sheriffs within England or Wales upon passing their Accompts, shall have their Quietus est, that then such Sheriff and Sheriffs, their Heirs, Executors, and Administrators, Lands, Tenements, Goods and Chattels shall be thereby absolutely discharged of all manner of sums of money by them levied and received notwithstanding any such pretence, that the same were not accompted for, or other pretence whatsoever, unless such Sheriff

A Quietus est, to be a sufficient discharge for a Sheriff, if not questioned within four years after grant thereof.

be called in question, and Judgment given against him or them for the same within four years after such Accompt or Quietus est; And every Officer or Minister by whom or by whose default any Process shall be sent out contrary to the Statute, shall incur the like forfeitures and penalties to be recovered, by such person and in such manner, as by the said former Statute is provided.

Penalty as in the foresaid Act. 21 Jac. cap. 5.

Chester, Lancaster, Durham, Wales.

The Sheriffs of Chester, Lancaster, Durham, and the Counties in Wales being County Palatines, shall notwithstanding this Act, as to the manner of their Accompting, Accompt, as formerly before the respective Auditors only, and not elsewhere.

Proviso touching the Kings Remembrancer and Lord Treasurers Remembrancer.

By proviso in the said Act it is declared, That nothing in the said Act contained shall extend to enjoyn his Majesties Remembrancer, or the Lord Treasurers Remembrancer, to transcribe and deliver to the Ingrosser of the great Roll any Inquisitions or Seisures, but such as have been formerly charged in the Forreign Accompts of the Sheriffs, but for all Inquisitions upon Attainders, or other Forfeitures to the Crown, the same shall be put in charge as heretofore, according to the constant usage and decree of the Court of Exchequer. Nor shall the said Act extend to exclude his Majesties said Remembrancer of or from the writing forth Process for or upon any his Majesties Debts, Duties, Outlawries, or other charge whatsoever, or Process of Levari facias, at the prosecution of any person or persons, to levy the issues or profits of any Lands or Tenements seized or to be seized into the Kings hands, or Process of venditioni exponas for Goods seized or to be seized upon any Debt to his Majesty, his heirs or successors, or upon any Outlawry; Or to alter or charge the pleadings or other proceedings heretofore used in the said Office, upon any pleadings touching the said Debts, Duties and Seisures, or any of them. And that no Debt, Duty, Fine, Amerciament, or Seisure whatsoever, which shall be charged in the said great Roll of the Pipe upon any person by any Record, Process or Proceeding had, made, filed or recorded in his Majesties said Remembrancers Office, nor any Process or proceeding thereupon to be had, or made by virtue of the said Act, shall be respited, staid, mitigated, extenuated, compounded, or otherwise discharged, but by Order, Warrant or Judgment made, filed or entred in his Majesties said Remembrancers Office, where the Original of such Debt, Duty or Charge remaineth; And that in case any Process of summons of the Pipe shall be awarded, for or upon any such Debt, Duty, Fine, Amerciament or Seisure whatsoever, and the same shall not upon such summons be levied or answered unto his Majesty, That then the Clerk of the Pipe, or Ingrosser of the great Roll, shall the next Term after the retorn of such summons certifie the same in a Schedule into his Majesties said Remembrancers Office, that further Process may thence be issued for levying thereof. Nor shall the said Act extend or be construed prejudicial to his Majesties Remembrancer in any just, ancient, and lawful Fees belonging to his Office, and usually had by him or his Predecessors.

Continuance.

This Act to continue to the end of the first Session of the next Parliament, and no longer.

SECT. 3.

Of Arrests.

13 Car. 2. By the Statute of 13 Car. 2. touching Arrests, it is enacted, That after the 12th. of Febr. 1661. no person arrested by any Sheriff, Under-sheriff, Coroner, Steward, or Bailiff of any Franchise or Liberty, or by any other person having or pretending to have any authority or warrant, by force or colour of any Writ, Bill, or Process out of the Kings Bench or Common Pleas, wherein the certain or true cause of Action is not expressed particularly, and for which the Defendant is bailable by the Statute
23 H. 6. of 23 H. 6. shall be forced to give bond with sureties for his appearance at the retorn of the Writ, Bill, or Process, exceeding the sum of 40 l. to be conditioned for such appearance; And all Sheriffs and other Officers shall let to bail, and deliver out of prison and from their custody all persons by them arrested upon any such Writ, Bill, or Process, wherein the true cause of Action is not particularly expressed, upon security in the sum of 40 l. and no more, given for the appearance of such person so arrested to the
23 H. 6. Sheriff or other Officer, according to the said Statute of 23 H. 6.

Persons arrested by Process out of the Kings Bench or Common Pleas, not expressing the cause of Action, to be bailed.

upon security in 40 l.

And that upon appearance to be entred in the Term wherein such Writ, Bill or Process is retornable, for the Defendant by Attorney in the Court whence the said Writ, Bill or Process, issued, unto such Writ, Bill or Process, the Bond aforesaid is declared to be satisfied and discharged; And after such Appearance no Amerciaments be estreated upon or against any Sheriff or other person, concerning the want of such appearance.

An appearance shall discharge that Bond.

This Act not to extend unto any Arrests to be made by virtue of any Cap. Utlagarum, Attachment upon Rescous, or Attachment upon any contempt issuing out of either of the said Courts, though no particular certainty of the cause of Action be expressed in the said Writs; And that no Sheriff, Under-sheriff, or other Officer, shall discharge any person taken upon any Writ of Cap. Utlagatum, without a lawful Supersedeas first had; And that upon the said Writs of Attachment such lawful course be taken for security for appearance therein, as hath been heretofore used.

Arrests upon Cap. Utlagatum, Attachments upon Rescous or Contempts excepted.

Nor shall it extend to any Writ of Cap. ad satisfaciend' wherein a Writ of Exigent after a Judgment is to be awarded; Nor to a Capias ad satisfaciend' against the Defendant in order to make any baildable, but that the same continue and be, as before the making of the said Statute.

Arrests upon Cap. ad satisfaciend' to the Exigent, or against a Defendant excepted.

SECT.

SECT. 4.

Habeas Corpus.

Every person committed contrary to this Stat. shall have a Hab. Corp.

17 Car. 2.

By the Statute of 17 Car. 1. cap. 10. intituled, An Act for regulating the Privy Council, and taking away the Star-chamber; it is amongst other things enacted, That every person that shall be committed, restrained of his liberty, or suffer imprisonment by the order or decree of the Star-chamber, or of any other such Court, or by command or warrant from his Majesty, his heirs or successors, or by command of the Council Board, or of any the Lords or others of his Majesties Council, upon demand or motion by Counsel or others to the Judges of the Kings Bench or Common Pleas in open Court, have forthwith for the ordinary Fees a Writ of Habeas Corpus, to be directed generally to all and every Sheriff, Goaler, Minister, Officer, or other person in whose custody the party restrained shall be; who upon the Retorn of the said Writ, and according to the command thereof, upon due and convenient notice thereof given him at the charge of the party who requireth or procureth such Writ, and upon security by his own Bond, given to pay the charge of carrying back the Prisoner, if he shall be remanded by the Court to which he shall be brought, (the charges of bringing and carrying back the prisoner to be always ordered by the Court, if any difference shall arise thereabouts) bring or cause to be brought the body of the party so committed or restrained, before the Judges or Justices of the said Court from whence the Writ issued, and then certifie the true cause of such his detainer or imprisonment.

Directed generally.

Sheriff shall take the parties own Bond for the charges, and the Court shall order those charges if, &c.

SECT. 5.

Jurors.

No Pety-Jury in actions or suits concerning Customs.

14 Car. 2. 11.

By the Statute 14 Car. 2. concerning Tonage and Poundage, it is enacted, That upon any Action, Suit or Information, upon any Law or Statute concerning Tonage and Poundage, or Ships or Goods to be forfeited by reason of any unlawful Importation or Exportation, there shall not be any Pety-Jury, but such only as are the Kings natural born Subjects.

The Sheriffs of London upon warrant from the Commissioners for High-ways & streets requiring them to impanel and retorn Juries, shall do so.

13 Car. 2.

By the Statute of 13 Car. 2. for repairing the High-ways, and Sewers, and keeping clean the Streets in and about London and Westminster, the Sheriffs of London for the time being, upon warrant from the said Commissioners requiring them to impanel and retorn a Jury before them, or any five of them, are required to do the same accordingly.

19 Car. 2. 22 Car. 2. By the Stat. of 19 Car. 2. for rebuilding the City of London, the Sheriffs of London for the time being, upon warrant from the Lord Major and Court of Aldermen, requiring them to impannell and return before them a Jury of good and lawfull men of the said City, are required to do the same accordingly. *The Sheriffs of London, upon warrant from the Lord Mayor and Court of Aldermen, requiring them to impanel and return Juries, shall so do.*

22 Car. 2. The like is required by Act of the 22 Car. 2. Intituled an Additionall Act for rebuilding the City of London.

19 Car. 2. By the Stat. of 19 Car. 2. constituting Commissioners for taking Accompts, It is enacted, That the Commissioners or any five or more of them, by Warrant under their hands and Seals to any Sheriff, Bailiff or other Officer, within any County, City, Port, Corporation, or Liberty within this Realm, requiring them to return and cause to appear before them, or some of them, or such others as they shall appoint, good and lawfull men, inhabiting within their respective Counties, Cities, Ports, Corporations, and Liberties at such time and place as shall be thereby required, under such penalty as therein shall be contained, shall return them and cause them to appear accordingly. This to continue three years from the end of that session of Parliament. *The like Jurors to be returned before Commissioners for taking Accompts.*

SECT. 6.

Poor Prisoners.

19 Car. 2. By the Stat. of 19 Car. 2 4. touching poor Prisoners, It is amongst other things Enacted, that any Sheriff or other respective Officer having the Custody of the Gaol, with the consent of three or more Justices of the Peace, whereof one of the Quorum, may upon emergent occasions in their respective Counties, provide other safe places for the removal of the Sick, out of the ordinary and usuall Gaol the same places to be used for the Custody of the Prisoners, who according to their order shall be there kept, ordered, disposed and conveyed to the Gaol delivery in such like manner as Prisoners ought to be kept, ordered, disposed and conveyed in and from the common Gaols by the Laws and Statutes of the Land (provided no such place be made use of, for the purposes aforesaid against the good and free will of the owners thereof.) *If sicknesses and diseases happen among Prisoners, provision is made for their removal.*

The like power for the removal of Prisoners in time of Infection, is given to the Major, Bailiff, and other head Officer, or other persons, who have Custody of the common Gaol, within any Corporation of this Kingdome and Dominion of Wales. *Removing of Prisoners in Corporations.*

SECT. 7.

Pardon.

12 Car. 2.

Penalty of any Officer, &c. that shall go about to disquiet or trouble any person pardoned by this Act.

By the Stat. of free and general Pardon made in the 12th. year of his now Majesties reign, it is amongst other things enacted, That if any Sheriff or Escheator, or any of their Deputy or Deputies, or any Bailiff or other Officer whatsoever, by colour of his Office or otherwise, do levy, receive take, or withhold of or from any person, any thing thereby pardoned or discharged, and be thereof convicted or condemned by sufficient proof, shall pay for recompence thereof to the party grieved treble damages, besides all costs of the suit; And shall forfeit to the king ten pounds.

Fines, Issues & Amerciaments received by Sheriffs excepted.

Except all Issues, Fines and amerciaments, Rents, and other publick Duties, being levied, received, or collected by any Sheriff, Under-sheriff, Bailiff, Minister, or other Officer, to or for the use of the late King, the Parliament, or the Keepers of the Liberty of England, or any other person stiling himself Protector, or for his Majesty that now is, and accompted for and discharged.

SECT. 8.

Replevin.

17 Car. 2. 7. 19 Car. 2. 5.

Plaintiff in Replevin being Nonsute before Issue joyned in any the Courts at Westm. how the Defendant may avow.

The Sheriff shall enquire of the value of the Distress.

By the Stat. of 17 Car. 2. touching Repleving, it is enacted, That whensoever any Plaintiff in Replevin shall be Nonsuit, before Issue joyned in any suit of Replevin by plaint or Writ lawfully retorned, removed or depending in any the Courts at Westminster, That the Defendant making a suggestion in the nature of an Avowry or Cognisance of such Rent, to ascertain the Court of the cause of Distress, the Court upon his prayer shall award a Writ to the Sheriff of the County where the Distress was taken, to enquire by the Oath of twelve good and lawfull men of his Baliwick, touching the sum in arrear at the time of such Distress taken, and the value of the Goods or Cattel distrained; And thereupon notice of fifteen dayes shall be given to the Plaintiff or his Attorney in Court, of the sitting of such enquiry; And the Sheriff shall enquire of the truth of the matters contained in that Writ, by the Oaths of twelve good and lawfull men of his County; And upon the retorn of such Inquisition, the Defendant shall have Judgment to recover against the Plaintiff the Arrearages of such rent, in case the Goods or Cattel distrained amount unto that value; And in case they shall not amount to that value, then so much as the said Goods and Cattel so distrained shall in value amount unto, together with his full costs of suit; And shall have

Execution

Execution thereupon by Fieri facias, or Elegit, or otherwise, as the Law shall require. And in case such Plaintiff shall be Nonsuit after Cognisance or Avowry made, and Issue joyned, or if the Verdict shall be given against such Plaintiff, then the Jurors that are impanelled or retorned to enquire of such issue, shall at the prayer of the Defendant enquire concerning the sum of the Arrears, and the value of the Goods or Cattel distrained; And thereupon the Avowant, or he that makes Cognisance, shall have Judgment for such Arrearages, or so much thereof as the Goods or Cattel distrained amount unto, together with his full costs; And shall have Execution for the same by Fi. fa. or Elegit, or otherwise, as the Law shall require.

If the Plaintiff be Nonsuit after Issue joyned, may enquire concerning the sum of the arrears, and the value of the Distress.

And if Judgment in any the Courts at Westminster be given upon Demurrer for the Avowant, or him that maketh Cognisance, for any rent, the Court shall at the prayer of the Defendant, award a Writ to enquire of the value of such Distress; And upon the retorn thereof, Judgment shall be given for the Avowant, or him that makes Cognisance, as aforesaid, for the Arrears alledged to be behind in such Avowry or Cognisance, if the Goods or Cattel so distrained shall amount to that value; And in case they shall not amount to that value, then for so much as the said Goods and Cattel so distrained amount unto, together with his full costs of suit, and shall have like Execution, as aforesaid.

If Judgment upon a Demurrer, the Court shall award an enquiry of the value of the Distress.

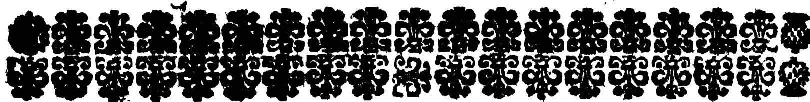
If the distress shall not be found to be to the full value of the Arrears, the party, his Executors or Administrators may distrain for the residue.

If the Distress do not amount to the full value of the Arrears, the party may distrain for the residue.

This Act made to extend to Wales, and Counties Palatine, 19 Car. 2. 5.

Wales.

19 Car. 2. 5.



CAP. II.

Sheriff.

SECT. I.

Some Observations of the Sheriffs Oath.

Sir Edward Coke late Lord Chief Justice of the Kings Bench, and removed from his places, being made Sheriff of the County of Buckingham, had a dedimus potestatem to take his Oath, annexed to a Schedule; To which he took exceptions: For that there were more Additions to the said Oath, than was in the ancient Oath set down in the Register, and afterwards confirmed and appointed by the Statute of 18 Ed. 3. He therefore conceived there ought not to be such Additions, unless by like authority of Parliament. The Additions were; First, That he should seek to suppress all Errors and Heresies, commonly called Lolardism, and should be assistant to the Commissaries and Ordinary in Church-matters; which part of the Oath was added by reason of the Statutes of 5 R. 2. and 2 H. 4. cap. 15. whereby it is appointed, that the same should be taken by the Sheriff, especially for those two causes: But he thereto Excepted, For that those Statutes are repealed by the Statutes of primo Edwardi sexti, and primo Eliz. and therefore ought not to be taken. The second Addition was, That he should return reasonable Issue; whereto he excepted, because it is appointed by the Statute, and penalties imposed for not performing it, therefore it ought not to be upon Oath. The third Addition was, That he should return all Juries, of the nearest and sufficientest persons; whereto he excepted, because that part of the Oath is not appointed by any Statute, and it is against common practice, that he himself should return Juries, it being commonly done by the Under-sheriff, who is also appointed by the Statute to be sworn. The fourth Addition was, That he should cause the Statute of *Winton*, and the Statutes against Rogues and Vagabonds, to be put in execution;

The first Exception.

The new Additions which were objected against.

The second Exception.

The third Exception.

The fourth Exception.

Cr. Car. fo. 25. Sir Edward Cokes case.

18 E. 3.

5 R. 2.
2 H. 4. cap 15.

1 E. 6.
1 Eliz.

tion; whereto he excepted, because the Statute of Winton is altered, and the Statutes against Rogues and Vagabonds are appointed to be executed by the Justices of the Peace, and not by the Sheriff. Upon these Exceptions the Lord Keeper assembled all the Justices to confer with them about the same; as touching the first point, they conceived it was fit to be omitted out of the Oath, because it is appointed by Statutes which are repealed, and were intended against the Religion now professed and established, which before was condemned for Heresie, and is now held for the true Religion. For the second Addition, they conceived it convenient, and for the service of the King and Subjects; and the greater part of them were of opinion, That an Oath in this and the other points, may be well enjoyned by the King, and order of State, without Parliament; and it may be well imposed upon the Sheriff to take, being for publique benefit, and execution of the Laws. For the third Addition, it is not so strictly to be intended, that he himself should return Juries, but it ought to be intended according to the construction of Law, That he himself, by himself or Under-sheriff, should return the Juries, which is a sufficient performance; for the Law saith, Qui per alium facit per seipsum facit. For the fourth Addition, it rests upon the former reasons, That this Oath being appointed and continued divers years, by direction of the State, although without the expresse Authority of any Statute-Law, yet may be well continued for the publique benefit, in repressing such persons; And although Authority be given to Justices of the Peace, to put those Statutes in execution, yet it doth not take away the Sheriffs Right, who is the Publique Conservator. And so they delivered their opinions to the Lord Keeper at his house at Reading.

Where the Oath ought to be amended.

The answer to the second Exception.

To the third Exception.

To the fourth Exception.

Enquiry in Dower.

Hill 35. Eliz. B.R. Randals case, Noy 21.

A. Brought Dower against the son to be endowed of Lands of which her Husband (Father of the Defendant) died seised: a Writ issued out to the Sheriff, to enquire of the damages; and he made his warrant to I. S. to take the enquest: It was the opinion of the Justices in this case, that he cannot in this case make a Deputy, because it is a judicial act, which the Sheriff ought to do in person. Hill. 35 Eliz. B. R. Randalls case. Noy 21.

Cannot make a Deputy to enquire in Dower.

Enquiry de dampnis.

To make Inquisition is a judicial act, which cannot be made by his Bailiff.

Where a Writ may be directed to the Sheriff, though he be a party therein.

Error assigned. Error, to reverse a Fine in Chester: The error assigned was, because the Writ of Covenant was directed to the Coroners, with this clause in the end of the Writ: Quia prædictus *Joh. Dove* Miles, est Vicecomes Comitatus *Cestriæ*, fiat executio brevis prædict. per Coronator. Ita quod Vicecomes non se intromittat; whereas the Writ ought to have been directed to the Sheriff, &c. And this was divers times argued, and much insisted upon by those who argued at the Bar for the Plaintiff in the Writ of Error: And first they said that if the Sheriff had been the sole party to the Fine, yet the Writ ought to have been directed unto him, because it is but a Summons, and the Sheriff may summon himself; Also it is not retorned, that he is Sheriff and cannot summon himself; and the course of Law is, that the Writ shall be directed to the Sheriff, and not unto any other, when it may be done without prejudice: And that the Writ is abated when it is directed to the Coroners, &c. vide 18 H. 8. 3. 9 H. 6. 12. The second reason, because that the Sheriff is not the sole party, but others are joyned with him, &c. But all the Court resolved, that it was not Error, for if the Writ be directed to the sheriff, and he is party, it is doubted in the Books, if the Sheriff as Plaintiff may execute a Writ for himself; And therefore it were good to avoid the doubt, to take a Writ directed to the Coroners, as well where the Sheriff is Plaintiff as Defendant, upon surmise thereof in Chancery at the time of suing the Writ: And it is the general course, to award the Writ to the Coroners, to avoid the doubt of delay; for if he be Plaintiff, and makes not such surmise, the Defendant will take exceptions, in abatament of the Writ; and so if he be Defendent, he may peradventure plead in abatement of the Writ, and cause him to have a new Writ: But when it is awarded to the Coroners, if the Defendant would have excepted against it, as peradventure he might in some cases, yet when he appears and accepts thereof, and comes and levies a Fine thereupon, he never afterwards shall assign for Error, that the Writ ought not to have been directed to the Coroners, especially upon this amicable Writ, to make assurance, &c. Wherefore all the Court agreed, that he never should assign it for Error, &c. and the Fine was affirmed.

That although the Sheriff was party, yet the Writ of Covenant should have been directed to him, and not to the Coroner.

Summons.

To whom Writs are to be directed.

To other parties besides the Sheriff.

The Sheriff may execute a Writ for himself.

Advice by the Court to avoid pleading in Abatement.

Estoppel.

Dove vers. Smithier, Cr. Car. 415, 416.

18 H. 8. 3. 9 H. 6. 12.

In a Præc. quod reddat, it is a good Retorn that one of the Defendants is Sheriff, &c.

A Præcipe quod reddat was awarded, Vicecomitibus Glouc. against A. B. and C. the Sheriffs retorned, that the said C. named in the Writ, was one of the Sheriffs of the said City; Ideo ego præfat. C. & D. alter Vicecom. Civitatis prædict. meipsum secundum exigentiam istius brevis summonire non possum: It was adjudged by by the whole Court to be a good return. 7 Eliz. C. B. Bendlows 39, 40.

7 Eliz. Pendlows. f. 39, 40.

SECT.

SECT. 2.

Where Covenants between Sheriff and Under-sheriff, shall bind, and where not.

Paf. 11 Jac. Rot. 346. Norton against Simmes, Hobart fo. 12, 13, 14.

Sir Daniel Norton Kt. late Sheriff of Hampshire, brought an Action upon an Obligation of one hundred pounds, against Richard Simmes, for performance of Covenants, whereof the effect was; That whereas Sir Daniel Norton had made Bryan Chamberlain his Under-sheriff at his will, the same Chamberlain by Indenture did Covenant with the Sheriff, to discharge and save him harmless of all escapes of prisoners, that should be arrested by him, or any Bailiff or Officers appointed by him; and another Covenant was, That he would not execute any Extent, Liberate, Elegit, or any other Execution, for any sum, above the sum of twenty pounds, before he had first made known to the said Sheriff, the nature and quality of the said Writ, and if any such Execution were above twenty pounds, then he should not execute it without the special warrant of the said Sir Daniel Norton, the High-sheriff: And there were also divers other Covenants; and the Defendant pleaded, that Chamberlain the Under-sheriff had performed all the Covenants; whereupon the Plaintiff replyed, That one White, Anno 44. Eliz. had recovered in the Common Pleas 203 pounds debt, against one Feilder, and that he had gotten 52 pounds thereof, by an Execution of Fieri facias, in the said County of Southampton, and died, and that Frances White his Executrix, had sued a Scire facias against the said Feilder, for the residue, sc. 151 pounds, and had Judgment, and took out a Capias ad satisfaciendum, and delivered it to the said Chamberlain, who arrested him by force thereof; and so he was in Execution, in the custody of the said Sheriff, for the said Debt, and afterwards escaped out of the custody of the said Sheriff. Hereupon the Defendant demurred; and the whole Court upon publick argument, gave Judgment for the Plaintiff; and in this case these points were resolved:

Debt upon Bond for performance of Covenants.

In an Indenture between the High-sheriff and his Under-sheriff.

A Covenant that he should not execute Executions above 20 l.

Performance pleaded.

A breach assigned.

23 H. 6.

First, That this case was not within the Statute of 23 H. 6. both because it was not a Bond made by, or in the behalf of a prisoner, as Beaufages case is, as also because the Statute is not pleaded, being a special Law; and also because it was not directly pleaded, that Norton was High-sheriff, or Chamberlain Under-sheriff, but only by way of recital in the Indenture which was pleaded.

The resolution of the Court.

Wyat Weiles case, in Co. Rep. accord.

It was also resolved, that the Sheriff might grant his Under-sheriffwick, to hold at his will only; for it was in his choice, to make or not to make an Under-sheriff, or to exercise it himself; That an Under-sheriff is in effect but the Sheriffs Deputy, and therefore according to the nature of a Deputation, he must be removable as an Attorney is, so that if the Sheriff should make him irrevocable, yet he may revoke him, there is neither Common Law nor Statute Law that makes him immoveable, he is but in the nature of a general Bailiff errant to the Sheriff, and the whole

How the Under-sheriffwick may be granted.

What an Under-sheriff is.

He cannot be irrevocable.

whole Shire, as others are over the Hundred; his Oath appointed by the Stat. of 27 Eliz. is, That he should bear himself well for so long as he shall continue in the Office: It is necessary both for the publick service, and for the indemnity of the High-sheriff, that he be removeable by the High-sheriff. *His Oath.* 27 Eliz.

Yet it is true, that Under-sheriffs have been long in use, and experience proves, that many Sheriffs cannot well execute it themselves; so this point was resolved, that he was a perfect Under-sheriff, and so the arrest well made by him, and so an escape upon it. *He may make an arrest.*

Where the power of the Under-sheriff cannot be abridged. Next it was resolved, that a Sheriff in making an Under-sheriff, did implicitly give him power to execute all the ordinary Offices of the Sheriff himself, that might be transferred by the Law, as serving of Process, and Executions, and the like; but he could not deal in a Writ of Redisseisin, because in that the Sheriff is a Judge, nor in that case of the Writ of Waste, where the Sheriff is commanded to go to the place wasted, because it is personal unto the Sheriff himself; hence it follows, that if a Sheriff will make an Under-sheriff, provided that he shall not serve Executions above twenty pounds, without his special warrant, this proviso will be void; For though he may chuse not to make an Under-sheriff at all, or may make him at his will, and so remove him wholly, yet he cannot leave him an Under-sheriff, and abridge his power, no more than the King may in case of the Sheriff himself: But it was said, that the case there was not so; That the restraint of Executions above twenty pounds, grew not on the part of the Sheriff, but on the part of the Under-sheriff, by his Covenant, which might stand for good notwithstanding the repugnancy to his Office: But notwithstanding that objection, the Covenant was holden void, as being against Law and Justice; for since by being made Under-sheriff, he is liable by Law to execute all Process, without anothers special warrant, for that is to deny or delay Justice, so this being a Covenant against Law, and being in the negative, needed no answer at all, as being void, and no Covenant in Law: And though it were not void, yet the general Plea of performance of all Covenants, will serve in the case of a negative Covenant. *Not to serve Executions above 20 l. is a void Proviso.* *Negative Covenant against Law, needeth not to be answered.*

Where one Covenant is void in Law, the Bond for performance thereof may be good, as to other Covenants. The Sheriff takes a Bond contrary to the Stat. and for a just Debt, it is void for both. But it was resolved, though this Covenant were void in Law, yet the Bond was good for the rest of the Covenants agreeable to Law; And a difference was taken between a Bond made void by Statute, and by Common Law; for upon the Statute of 23 H. 6. if a Sheriff will take a Bond, for a point against that Law, and also for a due debt, the whole Bond is void, for the letter of the Statute is so, and the Statute is a strict Law; but the Common Law doth divide according to common reason, and having made that void that is against Law, letteth the rest stand, as the 14 H. 8. fo. 15. is.

Hereof it followeth, That if the Covenant for discharge of Escapes (ut supra) were good in Law, and broken, that then the Plaintiff ought to have Judgment; and it was agreed, that if a man will take a Bond to be saved harmless of suffering one to have escaped, or for enlarging of him out of prison, against the Law, that these Bonds are void: And so are the cases of Dive and Man-

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ning in Plo. and the case of Thower and Whetstone, Mich. 2 & 3 Phil. & Mar. Dyer 118. and so is the case of 2 H. 4. fo. 9. for the Withernam.

But this case is clean otherwise, and was resolved by the whole Court, to be lawfull for the Sheriff to take Bond of his Under-Sheriff, to discharge and save him harmless of escapes upon arrests made by himself; for since he transferrs his Authority unto him, it is reason to take security of him, to perform all things justly & faithfully to himself & others; and there is nothing done or intended against Law, for there is no lawfull permission of any to escape already done, or to be done; As in the other case, where the fault is committed by the party, that takes the Bond upon confidence of that security; But here the best performance of the Covenant is, that no escape be suffered; And the next, that if any be suffered, that then he satisfie the party so, that the Sheriff may be at no loss. It was also resolved, that the Sheriff in this case, was not bound either to give notice to the Under-sheriff of the escape, or to make any request for discharge, for the Covenant hath no such thing, but binds him to discharge at his peril; And Hobert Chief Justice was of opinion, that if the covenant had not been against Law, for the Executions above twenty pounds, and that the Bar had been insufficient, because it did not plead specially to that negative Covenant, that yet if the replication were naught, and assigned no sufficient breach, the Plaintiff could not have had Judgment; for though the action were well brought upon the Obligation alone, yet when it appeareth that the condition was for performance of Covenants, now there can be no cause of action without some Covenant broken: And observe well Tilly and Woodlyes case, 7 E. 4. for this purpose, that if it doth appear to that Court, that the Plaintiff hath no cause of action, he shall never have Judgment, though he had a verdict for him, against one of the Defendants.

A Bond to save the Sheriff harmless from escapes, is good.

Where the under-sheriff covenants to save harmless from escapes, there he must take notice of all escapes at his peril.

If the bar is insufficient, and the Repl. were naught, yet (as this case was) although the Declaration was good, the Plaintiff shall never recover.

SECT. 3.

Where the New Sheriff shall be chargeable, and where the Old Sheriff only; and where their Executors; and how their Prisoners are to be delivered over, and what Retorns, by them good, and how to be made.

The New Sheriff is not chargable with such things which are executed before that they are delivered over to him by the Old Sheriff.

Wesley vers. Skinner & Catche, Cr. El. 355. Roll. 2 part. 457. Chandler vers. Thomson, Hob. 266. Egerton vers. Morgan & al. Bullrode 1 par. 75 usque 79. Smalman vers. Lane, Leon. 2 part. 54.

For if the Sheriff takes a man in Execution, and afterwards a New Sheriff is made, and afterwards and before the antient Sheriff delivers this Prisoner over by indenture to the New Sheriff, the Prisoner escapes, here the Old Sheriff only is chargeable for this escape and not the New Sheriff; for the New Sheriff shall be chargable for no other Prisoners, than what are delivered over to him by Indenture.

For what Prisoners the New Sheriff shall be chargeable.

Escape.

And herewith agreeth Smalmans case in Leonard; a Capias upon an Original was delivered to the New Sheriff of Warr. against Lane, at the suit of the Plaintiff, and the Sheriff informed the Court,

Execution executed by the Old Sheriff. Court, that before the Cap. directed to him, Lane was taken in Execution by the Old Sheriff, and that the Old Sheriff had imprisoned him in his house, and there he remained; And thereupon he prayed the advice of the Court, what retorn to make upon this matter, because Lane was never in his possession, but all the other Prisoners were delivered to him by the Old Sheriff; And it was the opinion of the whole Court, that by the Law the old Sheriff ought to deliver the body of him who is in his custody, by view to the New Sheriff, and from that time the Law shall adjudge such Prisoner to be in the custody of the New Sheriff, and not before.

The Old Sheriff to deliver his prisoners to his successor.

Where the New Sheriff is chargable upon an arrest by the Old Sheriff. Retorn. But where the Old Sheriff arrests a man, and afterwards retorns a languidus in prisona, and afterwards in exitu ab officio delivers him to the New Sheriff charged with the arrest, and then the New Sheriff suffers him to escape; here the New Sheriff is only chargeable with the escape; and although the Old Sheriff retorned a languidus in prisona, yet that is not material to the Plaintiff, he remaining alwayes in prison, and that retorn was only to excuse the bringing of the Prisoner at the day. King vers. Sir Eusebry Andrews, Cr. Jac. 380.

If the old Sheriff keep goods in his hands, what remedy. The Sheriff seised goods upon a Fi. fa. and upon a Venditioni exponas he retorned non invenit emptores, then his Office determined, and he still detained the goods in his hands; And by Doderidge and Jones, (cæteris absentibus) the Plaintiff hath no other remedy against the Old Sheriff, but to have issues retorned upon him. Dixons case, Latch 117. See afterwards fo.

If the Old Sheriff sells goods after he is discharged from his Office, yet the sale is good. Writ. Authority. Upon a Fi fa. the Sheriff seised goods to the value of the debt, and paid part of it, and the goods not being sold, nor the Writ retorned, the sheriff was discharged of his Office, and afterwards sold the residue of the goods without any Venditioni exponas; and the Court held that this sale was good, for the Fi. fa. without any other Writ, is a sufficient authority for the Sheriff to sell the goods; and although when he made the sale he was discharged of his Office, yet when he took them, he being in his Office, it is good enough. Ayre vers. Alen Cr. Jac. 73. Rolls tit. Execution 893. accord.

Retorn by the Old Sheriff to the New. A Venire facias was retorned thus, per T: R. Vic. Istud breve cum panello annexo mihi deliberat. fuit, per T. H. Mil. nuper Vic. in exitu ab officio, Et sic indorsat. T. H. Mil. nuper Vic. this was assigned for Error, because it did not appear that it was retorned by any one who had authority; for in saying nuper Vic. it is as much as to say, that he was not Sheriff at the time of the retorn made: But per Cur. it is good enough; for it appears by the Record, that T. H. Mil. was Sheriff next before T. R. also if he had retorned it, and put only his name to it, it had been good enough; but then nuper Vic. coming after it, it shall be intended that he retorned it when he was Sheriff. Bethyl vers. Parry, Cr. Car. 189, 190.

By the name of nuper Vic.

The form of a Retorn upon a Writ directed to the old Sheriff, and executed by the New. If a Writ directed to the Sheriff is executed, and afterwards a new Sheriff is elected, the successor ought to retorn the Writ in this manner. Recepi hoc breve prædecessori meo direct. sic indorsat. &c. Palmer vers. Marsh. Tr. 39 El. B. R. Rolls 2. part, 457. Egerton vers. Morgan & al. Bulstrode 1 pt. 70 usque 79.

So likewise in case of a New Bailiff. So if upon a warrant directed to the Bailiff of a Franchise, to execute a Writ; this is served, and afterwards, and before the retorn thereof, the Bailiff is removed, and a new Bailiff elected, Rolls Abridg. 2 part, 457.

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the return to the Sheriff shall not be in the name of the elder Bailiff, but of the new Bailiff in the same manner aforesaid, for the elder Bailiff is now a meer stranger.

Rolls Abr. 2. part. 458. But if a Writ directed to the Sheriff is not executed by him, and nothing done in the execution thereof before the old Sheriff is removed, but afterwards the new Sheriff executes it, this shall be returned generally in the name of that Sheriff which executed it, without making any mention of his Predecessor. *Where the Old Sheriff doth not execute it, how to be returned by the New Sheriff.*

Ibid. The same Law is likewise in the case of a Bailiff of a Liberty. *So likewise in case of a Bailiff*

19 H.6. 38. Rolls Abr. 2. part 458. If the Old Sheriff upon the Venire return twelve Jurors, upon the Distringas the successor cannot return that one Juror Nil habet, for if he had a return of the Venire facias, the same land is yet chargeable with the issues, although he hath aliened it, and the successor shall be bound by that return of the predecessor which he made, and if it be false, he may have a writ of disceit against him. *Where, upon the Return of a Venire fac. the Old Sheriff concludes his successor.*

Perkison vers. Gilford, Cr. Car. 539, 540. If the Sheriff levies goods, and dies before satisfying of the Plaintiff, an action of debt well lies against his Executors, but where the Sheriff is chargeable in his life time for a special tort, or misfeazans, there this person is only chargeable, and Actio moritur cum persona. *Where an action of debt lyes against the Sheriffs Executors*

Empson vers. Bathurst, Winches Rep. 51. If the old Sheriff makes an Extent, and before the Liberate a new Sheriff is chosen, here the new Sheriff shall have the Fees appointed by the Statute, and not the Old Sheriff, per Hobert Chief Justice int. Empson & Bathurst. Winch. Rep. 51. *Where the New Sheriff shall have the Fees, for an Extent made by the Old Sheriff.*

Boucher vers. Wiseman, Cr. El. 440. A Fieri fac. was delivered to the Undersheriff, who executed it the same day that the Writ of discharge came to the High Sheriff, but because it could not be proved that the Undersheriff had notice of the Writ of discharge before the Execution executed, it was held by the Court that the Execution was well executed, and that the Old Sheriff was chargeable for it. *Execution executed the same day that the Writ of discharging came, and good.*

SECT. 4.

What Obligations, Judgements, or Promises, taken by Sheriffs of their Prisoners are good, and what not.

23 H.6. c. 10. BY the Stat. of 23 H. 6. cap. 10. it is Enacted, that all Sheriffs, and all other Officers and Ministers, shall let out of Prison all manner of persons by them or any of them arrested, or being in their custody, by force of any writ, bill, or warrant, in an action personal, or by cause of Inditement for Trespass, upon reasonable Sureties of sufficient Persons, having sufficient within the Counties where such Persons be so let to Bail or Mainprise, to keep their days in such places as the said writs, bills, or warrants, shall require, (such person or persons which shall be in their Ward by condemnation, execution, Ca- *Who shall bail Prisoners. What Prisoners to be bailed. Upon what Sureties. When to appear. What person not bailable*

pias Utlagatum, or Excommunicatum, surety of the peace, and all such persons which be or shall be committed to Ward by the special command of any Justices; and vagabonds, refusing to serve according to the form of the Statute of labourers only excepted.) And that no Sheriff, nor any of his Officers or Ministers aforesaid, shall take, or cause to be taken, or make any obligation for any cause aforesaid, or by colour of their Office, but only to themselves, of any person, nor by any person which shall be in their ward, by course of the Law, but by the name of their office, and upon condition written, that the said prisoner shall appear at the day contained in the said Writ, Bill, Warrant, and in such places as the said writs, bills, or warrants, shall require. And if any of the said Sheriffs, or other Officers, or Ministers aforesaid, shall take any Obligation in other form, by colour of their Offices, that it shall be void. See Plowdens Com. 67, 68.

What Bonds may be taken. *How to be taken.* *What Bonds to be void.*

This statute consisteth of two parts, the one, for the benefit of the Sheriff, the other, for the party arrested. Sir Geor. Clifton vers. Web, Cr. El 8c8.

Where the stat. is for the benefit of Sheriff.

That which respects the benefit of the Sheriff is, that he shall take Bonds with sureties for the indempnifying of himself, which if he be amerced he may sue against the parties bound, or if he be sued for not having the body at the day, he may plead in bar.

And where for the benefit of the party.

That clause for the benefit of the party is, that the Sheriff under colour of his Office should not oppress the party, to make him any other manner of Obligation, than what is prescribed in the before-mentioned Statute. Plowdens Com. 67. a.

The several branches of the Statute.

This statute amongst other things hath three notable branches. Plowdens Com.

1. A command and authority for a Sheriff, &c. to let prisoners to bail

2. What prisoners are not bailable; both which are made in affirmance of the Common Law.

3. The Purview is only in the third branch, and that is, to avoid Obligations taken in other forms than what are expressed in the Statute.

What the Common Law was before this stat. *The inconveniences.*

Before the making of this Statute, the inconvenience was such, that when a man was in execution, the Sheriff would take upon him to let him at large taking a Bond from him to save him harmless, and those Bonds which they took, were generally treble the sum in which the parties were condemned, which proved very prejudicial both to the Plaintiff and Defendant, for the Plaintiffs only remedy was to sue the Sheriff for an escape, and was put to great costs and trouble in his prosecution, and when he recovered, he recovered no more than his debt with ordinary costs, and was kept out of his money a year or two, by these contrivances and practises which were too frequently used by Sheriffs, before the making of this Statute, and they were sometimes so tired out with the continual trouble and charge which doth inseparably attend an action in that nature, that they did oftentimes sit down with half their debts, rather than undergo the trouble of prosecuting. Plow. Com 67 b.

And

And on the other side, the Sheriffs were sure to be saved harmless by the security which they had taken from their prisoners, and by this means their bribery had safe conduct: to prevent which grand abuses, this Statute was made. Upon several branches of which Statute several Expositions and late Judgments in Law have been given by the Learned Judges, in the several Courts at Westm.

The occasion of the making of this Stat.

That the Sheriff, and all other Officers and Ministers, &c.

Johns vers. Stratford, Cr. Car.309. Stiles Rep.234.

The extent and meaning of the word, Officer in the statute.

Officers, &c. This word Officer being a general word, it was doubted, whether a Serjeant at Arms was such an Officer as was intended by this statute to take Bonds, &c. Henden Serjeant was of opinion that it extended only to Sheriffs, and their Bailiffs, and other Officers, and guardians of Prisons, to which construction the whole Court seemed to incline. And as Rolls Chief Justice hath observed Styles Rep.fol.234. that a Serjeant at Arms is out of this Stat.

Bracebridge vers. Vaughan, Cr. El. 66.

was included in that statute, and so are divers persons ... in the purview of the statute, though not here mentioned: according to which opinion it was adjudged in Mich. 29 El. int. Widow and Clerk, that the Major of a Corporation although not named in the statute, was included in the purview thereof.

Major of a Corporation.

Shall let out of Prison, &c.

Widow vers. Clerk, Cr. El 76,77

The penalty that the Sheriff undergoes for not bailing Prisoners.

At the close of this Statute it is provided, that all Sheriffs, Bailiffs, &c. which do contrary to this Act, shall forfeit treble dammages, and 40. l. to be divided betwixt the King and Informer; upon which clause an action of debt was brought for 40. l. in Mich. 29 El. Cr. Eliz. fo. 76. the plt. set out in his Decl. that he was sued in the Court at Nottingham before the Major and Sheriffs, &c. and was afterwards taken and imprisoned, &c. and that he being so in custody of the Major, he offered sureties to appear, &c. which sureties the Major refused, and still kept him in prison, and for the matter, (upon a motion in arrest of Judgment) the Court was clearly of opinion that the plt. should have Judgment, but it was afterwards moved that forasmuch as by the stat. of 18 Eliz. it is provided that no action shall be brought upon Penal Statutes but by Information or Original, and not otherwise in the negative, and this action being brought by Bill; for this cause only and no other, nil cap. per Billam was awarded.

Major.

18 El. c.5.

How this action to be brought.

10 R.101. Cotton vers. Wale, Cr. El. 862. Barton vers. Aldworth Cr. El. 624.

What securities he must take.

But Nota the Sheriff is not bound to let a Prisoner to bail, except he tender two sufficient sureties.

By force of any Writ, Bill, or Warrant, &c.

To what Writs bail for appearance must be taken.

Stepny vers. Loyd, Cr. El. 646,647.

No attachments out of the Court of Requests.

Writ, &c. Although the Statute speaks generally of any Writs, &c. yet it is intended of such writs which required bail at the Common Law, before the making of this statute; and therefore where the Sheriff took a Bond of the Deft. (who was arrested by virtue of an Attachment out of the Court of Requests) to appear before

Not to Attachments out of the Court of Requests. before the Kings Council attending in the Court of Requests at Westm. &c. it was adjudged by the whole Court that the Proces was not any warrant to the Shriff to take the body nor the obligation; and although it was urged, that in regard he took this Bond colore officii, *Colore officii.* although he was never lawfully in his custody, and then the Bond is within the words of the statute, yet Curia contra, for the statute intends Bonds which are taken of such persons who are in their custody by due course of Law, but the Bond here taken was by Duress, and so avoidable. But upon an attachment out of the Chancery *But to Attachments out of the Chancery.* the Sheriff took a Bond to appear, &c. and there the Court was of opinion, that it was within the Statute. Burton vers. Low, Stiles, Rep. 234. Bewfages Case, 10. R. 100.

Upon reasonable Sureties, of Persons having sufficient within the County.

Upon reasonable Sureties: The word Sureties being in the plural number, *What sureties must be taken.* the question was, whether an Obligation taken by the Sheriff with but one surety were good or no; on the Defendants part it was alleadged, that the plural number cannot be satisfied with the singular number, because it is against the very words of the Stat. but it was resolved by the whole Court that the Bond was not void, *One surety only, and yet good.* for the words, upon reasonable sureties of sufficient persons, are added for the security of the Sheriff, and therefore if he will take but one surety, it is at his peril, for he shall be amerced if the defendant doth not appear, and therefore the statute makes not the Bond void in such case, for the branch which prescribes the form, *The form of the Bonds.* requires that the Bond shall be made to the Sheriff, by the name of his office, &c. that the prisoners shall appear, in which clause no mention is made of the sureties; so that the intent of the stat. was, that this was at the peril of the Sheriff, to leave it to his own discretion to take one, two, or more securities, as he thought fit. Bewfages 10. R. 100. b. 101. Druries Case there cited. Clifton vers. Web. Cr. El. 808. Scryven & Dyther Cr. El. 672

Of Persons having sufficient within the County, &c. Although the words of the Statute here are, Having sufficient, &c. yet although the surety or sureties have not sufficient within the same County, the Bond is good enough, for the words of the stat. as to this point are more for counsel or direction to the Sheriff, than for restraint or precept to him: also this clause is made for the benefit *What persons may be sureties.* and advantage of Sheriffs, for if the defendant cannot procure two sufficient sureties, having sufficient within the same County, the Sheriff is not bound to let him to bail; and this exposition agrees with the antient Rule, *This clause rather for direction than precept.* Quilibet potest renunciari juri, pro se introducto. And according to this resolution it was afterwards resolved, that a Bond taken by the Sheriff of one which was not an inhabitant in the County, nor had any estate there, was good, notwithstanding the words of the statute, for the reasons aforesaid; and also for that the Stat. doth not make void any Bonds, but such only which are made in other form, in oppression of the people: *What sureties may be taken.* so likewise where the defendant pleaded, that the plaintiff took the Bond of him and a stranger, which stranger had nothing in the County, nor did not there inhabit, upon a demurrer to the plea it was ruled according to the former resolutions in every particular. *What Bonds void by the statute.* 10. R. 101. Bewfages Case Cotton vers. Wale, Cr. El. 862. Barton vers. Aldworth, Cr. El. 624. Blackbourn vers. Michelborn, Cr. El. 852. Sir Geo. Clifton vers. Web. Cr. El. 808.

And that no Sheriff, &c. shall take, or cause to be taken, any Bond, for any cause aforesaid, or by colour of their Offices, but only to themselves, by the name of their Office, &c.

Any Bond, &c. There are three forms to be observed for Bonds which come within this Statute.

Cotton vers. Wale, Cr. El. 892.

The forms to be observed for Bonds which come within this stat.

1. It must be made to the Sheriff himself.

2. To him by the name of his Office.

3. That it shall be only for appearance at the day.

All which circumstances being duely observed, although the Bond be something variant in other circumstances, it is not material, but Bonds made for the Sheriffs profit in oppression of the people, are made void by this Statute. Upon a Cap. in placito debiti for 320 l. the Sheriff took a Bond but for 100 l. all which matter being discovered in pleading by the Defendant, the Plaintiff thereupon demurred, and it was objected, 1. That the Bond was void, because the Condition was only ad respond. in placito debiti generally, which is uncertain, for it may as well be in an Annuity, &c. Also the sum ought to be shewn in the Condition, that the Defendant may have Conusans what to answer to, but the Court overruled them in it, and said that it was well enough. A second exception was because the Bond is for 100 l. being for an appearance only, whereas it hath been adjudged a 40 l. Bond is sufficient, and therefore the taking of a greater Bond is extortion, and void within the statute, for if the Sheriff should have such an unlimited power, he might take a Bond of 1000 l. and so oppress the subject; but the Court were of a contrary opinion likewise as to this Objection, for the stat. being general, doth not restrain him to any sum or any sureties, for he may take one or two or more sureties according to his discretion, and when it is only for the appearance of the party, he may take what sum he pleaseth to force the party to appear: and although a Bond of 40 l. is sufficient to excuse him for an Escape, because by the statute he is forced to let him to bail, yet non sequitur that he should be restrained from taking a Bond with a greater penalty. Also Bonds taken by Sheriffs, &c. ought to be certain and true Latin, for where the Sheriff took an Obligation for appearance in quadragent. libris, whereas it should have been quadragint. for this very reason a Nil cap. per Billam was awarded.

Villers vers. Hastings, Cr. Jac. 286.

If it be good in substance, though not in some circumstances, yet within the stat.

Ad respond. in placito deb. *generally, and good.*

With what penalty the Sheriff may take a bond for appearance.

They must be true Latin, otherwise void.

Feilder vers. Tovey. Styles Rep. 257, 258.

By colour of their Offices. If the Sheriff arrest a man in his own County, and afterwards carries him into another County, and there detains him until he hath given him a Bond for appearance, this Bond is out of the Statute, but the proper and only remedy which the Defendant hath to avoid this Obligation, is to plead per Duress to it. So likewise if a Process comes to the Sheriff, to take the body, &c. which the Sheriff doth accordingly, and takes an Obligation for appearance, but by Law the Process was not any warrant to the Sheriff to take the body, (it issuing out of a Court which had no authority to grant it) here this Bond was taken by Duress, and so avoidable by the award of the court, although it was alledged that the sheriff took it colore officii.

Arrest in one County, and takes a Bond in another County.

Brown vers. Druus, Cr. Jac. 745.

Duress.

A Bond taken upon a Process, issuing out of a Court which had no authority to grant it.

Stepny vers. Loyd, Cr. El. 646.

But

By the name of their Office. But only to themselves, by the name of their Office: herewith agrees expresly Cotton and Wales case, Cr. El. 862. and Villers and Hastings case, Cr. Jac. 286. The Sheriff took a Bond of one in his custody by the name of B. W. Armiger, but omitted Vic.Com.Oxon. Afterwards a stranger, without the Sheriffs privity, interlines these words, (Vic. Com. Oxon.) the Defendant did not appear, whereupon this Bond was sued, and the Defendant pleaded generally, non est fact. and all this matter being found by special verdict, it was upon long debate adjudged for the Plaintiff, because the Defendant had not made use of those advantages which he might have had; for he should have craved Oyer of the Bond, and if it had appeared to have been the bond of the Sheriff, taken by him as Sheriff, this would then have made it void; but the pleading non est fact. and taking no notice of the statute, (which he ought to have pleaded, being no general Law) the Court shall suppose that this Bond was taken by him as B. W. only, and not as B. W. Vic. &c. and this interlineation being made by a stranger, without the Plaintiffs privity, and not being in a place material, shall not hurt the Bond.

When interlineation shall vacate a Bond. *How to avoid it for that cause.* *Non est fact. no plea to it.* *Stranger.* Cr. El. 862. Cr. Jac. 286. Winchcomb vers. Pigot, Bulstrodes Rep. 2. part. 246, 247, 248. Pigots case, 11 R. 26. b. 27. 28. Plo Com. 65.

Upon condition written, that the Prisoner shall appear at the day contained in the said Writ, &c. as is before observed upon the word Bond: one of the essential parts of this Statute is, that the Bond therein prescribed, must be with condition to appear at the day contained in the Writ, &c. and that all Bonds taken in other form shall be void; although Sheriffs are not tyed up precisely to the words in the statute, so that the Conditions be good as to the matter and substance thereof, it sufficeth: And herewith agreeth the case of Seckford vers. Wolverston, Pas. 26 Eliz. where the Sheriff took a Bond with condition, that if the Defendant do personally appear in the K. Bench at Westm. there to answer, &c. that then, &c. And it was moved, that this Bond was void: First, because this word personally was put into the Condition, which was more than the Stat. required; but as to this the Justices were all of opinion, that the bond was good enough. Secondly, the condition went further, viz. and there to answer,; which was likewise more than the statute required; and as to this point Wray Chief Justice put a difference, where the words are there to answer, the Bond is well enough, but if the words had been appear and answer, then the Condition had been void, for it may be the Plaintiff will never declare against him; but Gaudy and Ayloff Justices were of opinion, that the Bond was void; so likewise where the Condition of the Bond was, that if the said R. D. personally appear before the Queens Majesties Justices at *Westm. à die Pasc. in Quindecem dies*, to answer J. H. as shall appertain, and further to do and receive as the Court therein of him shall consider in that behalf, that then, &c. the Defendant pleaded the Statute, and upon a Demurrer it was adjudged, that the Bond was void: So likewise in Mich. 1650. where upon an action of Debt brought upon a Sheriffs Bond, and upon Oyer of the Condition it was, That the Defendant should appear *tali die in Cancellaria apud* Westm. *ubicunque fuerit*; to which the Defendant pleaded the statute, and the Plaintiff demurred upon him, and several exceptions were taken by the Counsel; First, because the party was bound to appear in a Court, which was not a fixt Court, for the Court of Chancery is a moveable Court, and not a fixt Court, to Westm. or any other place. Secondly, the Condition is impossible, for it is, that the Defendant shall appear

When the appearance must be. *Conditions.* *Surplusage.* *Diversity.* *Condition.* *The form of the stat. not pursued.* *To appear apud* Westm. *ubicunque, &c. uncertain.* *Impossible.* Cr. Jac. 286. See Plo. Com. 62. b. usque 69. Leonard. 1. Pt. 78. case 103. Scryven vers. Dyther, Cr. El. 672. Barrow vers. Lowe, Styles Rep 234.

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pear in the Chancery at Westm. ubicunque fuerit, and so it is impossible for him to appear at Westm. and at another place at the same time. Thirdly, the Bond varies from the Statute in some things, and enjoyns more than the Statute requires in other things; and by Rolls and Jermyn, here is a material variance in the Bond, which makes it void, for neither the Kings Bench nor Chancery are fixt Courts, and therefore the Defendant ought not to be precisely bound to appear at Westm. and then the adding of ubicunque, &c. is a fatal fault, and for this reason a nil capiat was awarded to be entred.

Where the Bond is deficient, and where it enjoyns more than is required.

The Statute saith, that the condition must be for the Defendants appearance at the day of the return of the writ. I have met but with one case to this purpose, which I will here give you an account of, it being a case in the point. In an action of debt upon a Sheriffs Bond, the Defendant sets forth the condition, which was, that he should appear die Sabbati, &c. to which he pleads, that the Writ by which he was taken was returnable die Veneris, &c. and then sets forth the Statute; the Plaintiff replyes, that the Writ was returnable die Sabbati, &c. and not die Veneris, &c. the Defendant rejoyns and maintains his Bar, and traverses with an absque hoc, that it was returnable die Sabbati, &c. and to this the Plaintiff demurres: The first Exception which was shewn was, that the Defendant was concluded to say, that the Writ was returnable die Veneris, &c. because the condition of the Bond had concluded him; But the Court was against this Exception, for the Statute makes all Bonds taken by Sheriffs void, if not according to the Statute, notwithstanding the recital in the condition, otherwise the Statute would be of little force. Secondly, it was moved, that the Rejoynder was not good, because the Defendant ought to maintain his Bar, and conclude, Et de hoc pon. se super patriam, &c. there being a negative and affirmative before, by the Bar and Replication? But Twisden and Wyndham Justices were of opinion, that the Rejoynder was good enough, because it was material to enquire, whether there was any writ returnable die Sabbati, for the Defendant in his Bar says, that he was taken by Writ returnable die Veneris, which being different from the condition of the Bond, doth not warrant it; and the Plaintiff in his Replication says, that he was taken by the same Writ mentioned in the condition, so that if he had said no more, there had been only two affirmatives; and his allegation that there was no false writ, being not material to the issue, the Defendant made a good Traverse in his Rejoynder, and according to these opinions it was afterwards adjudged.

When the Defendant must appear.

Bennet vers. Filkins, Mich. 18 Car. 2. Rs. in B.R.

The Bond was to appear die Sabbati, and the writ was to appear die Veneris.

Condition. *Estoppel.* *Recital.* *Conclusion.* *Rejoinder.* *Traverse.*

And all Bonds in other manner and form, taken by colour of their Offices, shall be void: This Act, as hath been before observed, hath abridged the Common Law, as to Bonds taken by Officers, and tyed them to a strict form; but this caution must always be observed, that this being a particular Act in a generality, it ought to be pleaded when any Bond is to be avoided, otherwise the Court cannot take notice of it; and although the Statute speaks generally of all Bonds made in other form, &c. yet it is to be intended of the matter of the Bonds, as to the Sheriff: These words, by colour of his Office, are general words, and extend to other Bonds taken colore officii, as well as to those taken of persons in their ward; for where the Sheriff upon the executing of

Plo. Com 65. Blackbourn vers. Michelbourn, Cr. El. 852. Cotton vers. Wale, Cr. El. 862. Sympson vers. Bathurst, cited by Jones Justice, inter Lyster & Bromly Cr. Jac. 286, 287.

He which will take advantage of this Act, must plead it.

To what Bonds this Stat. ex[tends].

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an Execution, took a Bond for the payment of his Fees, and brought an action upon it, the Defendant pleaded to it the Statute of 23 H. 6. and the Court conceived, although he might have such Fees as were allowed by the Statute, yet he might not take a Bond for them, for under colour thereof he might so have double Fees: But where the Sheriff hath taken Goods in Execution, and afterwards takes a Bond of the Defendant to pay the money at the day, this Bond is good, and not to be avoided by the Statute; but where a Sheriff, &c. takes a Bond of his Prisoner for Meat and Drink, &c. this is colore officii, and yet utterly void, for the Law saith, if a man be in execution, he ought to live of his own, and the Plaintiff nor the Sheriff are not bound to give him Meat nor drink, but if he hath nothing to live upon, then he must live upon the charity of others, and if that fail, the Book saith, let him dye in the Name of God. It is likewise to be observed, that although the Statute here makes mention of Bonds, &c. only, yet promises made against the intent of this Statute, come likewise under the lash of it; and so it was adjudged, Mich. 32 El. where the Plaintiff declared, that he had taken the body of one H. in Execution, by warrant directed to him as special Bailiff; the Defendant as well in consideration that the Plaintiff would permit him to go at large, as of 2 s. paid in hand, promised to pay the Plaintiff all the Money in which H. was condemned; and it was moved, that this consideration was void, being contrary to 23 H. 6. and although it be joyned with another consideration, yet it being void as to part, shall be void in all: So likewise where J. S. promised A. Goaler, that if he would let a Prisoner which he had then in his custody go at large, that then he would pay him so much money, for the breach of which an action was afterwards brought, and a verdict thereupon had, but Judgment was staid by the opinion of the whole Court.

The Sheriff cannot take Bond for his Fees.

But to pay money to him at the return of the Fi. fa. *he may take Bond.*

Yet for Meat and Drink, &c. *he cannot take it.*

For if the Prisoner be poor, he may live upon charity, or starve.

What promises are within this Stat.

Promise made to a Goaler to suffer a Prisoner to go at large, void.

Bewfages case 10 Rep. 100, 101, 102.

Plo. Com. 67. b

Fetherston vers. Hutchins, Cr. El. 199, 200. Plo. Com. in Maning-hams Case.

Elitham vers. Martin, Bolstrode 2. part. 213.

CAP.

CAP. III.

Sheriffs Fees.

SECT. 1.

What Fees Sheriffs may lawfully take, and how to be recovered.

29 El. c. 4.

By the Statute of 29 El. cap. 4. it is enacted and directed, That upon Extents and Executions, the Sheriff shall or may take twelve pence of and for every Twenty shillings, where the sum exceeds not one hundred pounds; and six pence of and for every Twenty shillings being over and above the said sum of one hundred pounds; Provided, that this Act shall not extend to any Fees to be taken for any Execution to be had within any City, or Town-Corporatte.

What Fees Sheriffs, &c. may take upon executing Executions.

Not to extend to Corporations.

Walden vers. Vesteys Latch Rep. 19.

Upon this Statute several Questions have been raised:

1. Whether Debt lies for the Sheriff for his Fees? and it hath been adjudged that it doth; for when a Statute doth not express what remedy shall be had for a Fee, or Forfeiture, &c. in such Cases Debt lies for the same.

1 Quest. whether Debt lies for the Sheriff upon this Stat.

2. The second Question upon this Statute is this: The Sheriff makes a warrant to the Bailiff of a Liberty, to make Execution, whether the Sheriff or the Bailiff shall have the Fee because the Statute says, that the party which makes the Execution shall have the Fee.

2 Quest. Who shall have the Fee, whether Sheriff or Bailiff.

Also, if the old Sheriff makes an Extent, and afterwards the new Sheriff makes the Liberate, what Sheriff shall have the Fee, and which of these Sheriffs shall be said to make Execution?

Whether the old or new Sheriff shall have it.

3. The third Question hath been, (whereas the Statute says, That the Sheriff shall have 12 d. in every 20 s. where the Debt exceeds not 100 l. and 6 d. for every 20 s. where it is above 100 l.) whether the intent of this Statute is, that if the Debt be 140 l. the Sheriff shall have for the 100 l. 12 d. in the pound, and 6 d. in the the pound for the 40 l. or but 6 d. in the pound for the whole 140 l.?

3 Quest. How much he shall have if it exceeds 100 l.

Latch 17.

Also, whereas the Proviso in the said Statute says, That these Fees shall not be taken, for any Executions had in any Town-Corporate, and the Sheriff enters into a Corporation, and executes an Execution, whether he shall have the Fee, or whether this clause extends only to Executions upon Judgments in inferior Corporations?

If he enters a Corporation what Fees he shall have.

Debt lyes by the Sheriff for his fees for executing an Execution.

As to the first point: Trin. 36 Eliz. in Com. B. Debt was brought by the Sheriff of London, for Fees for executing a Cap. ad sat. for 12 d. in the pound for the first 100 l. and 6 d. in the pound for the residue, and it was demurred unto by the Defendant; and the only cause insisted upon was, whether this Action lyes or no, there being no action given by the Statute? but the Court held, that it did well lye, sed adjornatur. And afterwards in Mich. 8. Car. the same action was brought, and upon a Writ of Error Judgment was affirmed: So likewise where the Defendant promised, that in consideration that the Sheriff would execute an Execution for him, he would pay him so much, &c. (which was allowed by the Statute for him to take) and Glanvill Justice was of opinion, that this was a void consideration, because at the Common Law a Sheriff ought not to take any Fees, but it was Extortion; and this Statute is made only to discharge a Sheriff from Extortion, if he take only such Fees as the Statute allows him to take; but the Statute gives him not any remedy for them, for he ought to execute the Writ at his peril, otherwise he shall be punished, and it is no excuse for him to say, that the party would not pay him his Fees: But all the other Justices held it to be a good consideration, because the Execution was made at his request, and to be a benefit to him; and by the words of the Statute, the sheriff may lawfully take his Fees, and consequently a promise to have them paid: But it hath likewise been adjudged, that where the sheriff took a Bond for the payment of his Fees, to which Bond the Defendant had pleaded the Statute of 23 H. 6. that he had thereby avoided it; for the Court conceived, although he might take such Fees as were allowed by the Statute, yet he might not take a Bond for them, for under colour thereof he might so have double Fees.

Gurny and Somes case, Cr. El. 335. *Lyster vers. Bromly, Cr. Car. 286, 287.* *So likewise an action upon a promise for fees is maintainable.* *Stanton vers. Sulyard, Cr. El. 654.* *See Sympsons case, cited int. Lyster & Bromly, Cr. Car. 287.* *Fees.* *Extortion.* *Excused from Extortion.* *Sympson & Bathurst, cited int. Lyster & Bromly, Cr. Car. 287.* *The sheriff may lawfully take his Fees.* *23 H. 6. Empsons case Latch Rep.* *He must not take a Bond for them.*

What fees Bailiffs of Liberties shall have.

As to the second point, constant practice ever since the making of the Statute hath been, that the Bailiff of the Franchise shall have the Fees: the reasons may be, First, because the Statute says, that he that executes the Execution, shall have the Fee: and, Secondly, although I find this point moved in Latch 52. yet I find it not stirred in any other Book; from which this conclusion may be drawn, that the practice being so to this day, and no authority to contradict it, then consequently the Law is so likewise.

Whether the old or new sheriff shall have the fees.

But as to the other point it hath been adjudged, that if the old sheriff makes an Extent, and before the Liberate a new sheriff is chosen, here the new sheriff shall have the Fees appointed by the Statute, and not the old sheriff. *Empson vers. Bathurst, Wynch Rep. 51.*

Where the sheriff is to have 12 d. in 20 s. and where 6 d. *Escape.*

As to the third point, viz. What Fees, &c. It was alledged and argued by the Plaintiffs Counsel, to the first branch, that the sheriff shall have 12 d. in every 20 s. for the 100 l. and 6 d. for every 20 s. above 100 l. because the greater the sum is, the greater is the sheriffs labour and hazard, for fear of escape; and it would be contrary to reason, that his wages should be less for 180 l. than for 100 l. *Walden & al. vers. Vesy & al. Latch Rep. 51. & 17. Lyster vers. Bromly, Cr. Car. 286. Proby vers. Lumly, Pasc. 14 Jac. Ro. 531.*

Sheriff. *Corporation.*

To the second branch he argued, that the sheriff shall have his fees notwithstanding the Proviso, 1. Because no man will deny, that if the sheriff takes a prisoner near the walls of the Town, but that he shall have his Fee, therefore there is no reason to the contrary, when he takes a prisoner within the walls.

And doubtless the Proviso is to be intended of Executions, made upon Judgments given in inferior Courts in Corporations, for it is not reason, that the Bailiff or Sheriff should have so large Fees for taking a Prisoner which perhaps may live the next door to him, as he shall have for travelling about the County to take Prisoners: If the Law were not so, then doubtless these two great inconveniences would follow;

The Proviso extends only to Executions upon Judgments given in inferiour Courts.

1. The Sheriff having no Fee, would be very slow in making Executions, where the party lived in a Corporation, and so Justice, and the execution of Justice, which is much favoured in Law, and is fructus & effectus Legis, would be very much delayed.

The inconveniences, if it should be otherwise.

2. If this construction should not be made, Corporations would become an Asylum and refuge for decayed persons.

And accordingly Judgment was afterwards given by the whole Court for the Sheriff Plaintiff. But Doderidge Justice said, where a City is also a County, there if the Bailiff or Sheriff makes Execution, perchance he shall not take the Fees limitted by the Statute. Jones Justice, it will be a question, if an Execution issue out of the County, to take a Prisoner in a City, and the Sheriff makes his mandate to the Bailiff, whether he shall have the Fees by the Statute: but if the Town be also a County, there the Sheriff upon Execution out of this Court ought to have his Fees.

Latch 52.

The difference where the City is likewise a County.

Where the Sheriff makes his Warrant to his Bailiff.

So likewise it was adjudged, First, That the Sheriff should have for the first 100 l. 12 d. in the pound, and but 6 d. for every 20 s. above 100 l.

Lyster vers. Bromly, Cr. Car. 286, 287. & Gurny & Some's case, Cr. El. 335 agreeth expresly.

What Fees, &c. Sheriffs shall have.

2. That this Proviso shall not extend to the executing of Executions from the superior Courts at Westm. but only for the executing of Judgments obtained in the Courts of the Corporations.

What Fees to be paid for Executions in Corporations.

Thus much touching Fees for executing Executions.

It was adjudged by the Court, that Sheriffs, &c ought not to take any Fees, either for the breaking up executing or retorning of a Capias Utlagatum.

Wilshires case, Hetleys Rep. 52. Brownlows 2. part 283.

Must take no Fees upon Cap. Utlagat.

So likewise, where the Defendant promised the Plaintiff, that in consideration that he would procure a special warrant from the Sheriff, and would arrest J. L. that he would give him 40s. and he sets forth, that he had procured a warrant and arrested him, per quod, &c. And it was hereupon moved in arrest of Judgment;

Batho vers. Salter, Latch Rep. 54, 55, 56.

Promise to pay 40 s. &c. for an Arrest, is against the Stat.

1. That this consideration is against the Statute of 23 H. 6.

23 H. 6.

And void by the Common Law.

2. Admitting it to be out of the Statute, yet it is void by the Common Law, because it is extortion to take greater Fee than the Law allows, to which all the Court agreed, and gave Judgement accordingly.

SECT. 2.

What the Sheriff may do in the Executing of *Cap. Utlagat.* Process and Executions, *&c.*

In the execution of a Cap. Utlagat. *the Sheriff may take* Posse Com. *and break open the house.*

Upon a Cap. Utlagat. delivered to the Sheriff in Court, it was moved that the Sheriff should be commanded to execute the Writ, who replyed that he could not do it, because the Defendant kept his house, to whom the Court answered that he might take Posse Com. with him, and break open the house.

Hare vers. Curson, Goldsbr. Rep. 79. Semayn vers. Gresham, Cr. El. 908, 909. Park & al. vers. Evans, Hob. 62.

Craft and force in executing a Measne Process, punished.

The Sheriffs Officers with a Warrant upon a Measne process came to the house where the Defendant lodged, and knockt at the door, whereupon the house keepers wife came to the door, and opened it a little to see who was there, and the Bailiffs presently with their swords drawn rusht in by force, and went up to the chamber-door where the Defendant lay, broke it open, and hurt divers in the house.

It was holden by the Court that the Entry was unlawfull, for the opening of the door was occasioned by craft, and their entring in, was by violence, for which offences they were all fined.

Waterhouse & Ux. vers. Saltmarsh, Hob. 263, 264.

The Sheriff must not enter by violence, or with drawn swords. Nor breaking open doors, where no opposition is made. Fined for the outrage, and for discharging the Defendant in the Utlawry.

So likewise where J. S. and J. N. were bound to C. and C. obtained Judgment against J. N. but forbore the executing of it, to see if any agreement could be made; at length C. took of J. N. his debt and charges, and assigned over his Bond to J. N. to sue S. in his name, whereupon J. N. sued forth a Lat. against J. S. in the name of C. and withall a Cap. Utlag: after Judgment at the suit of one J. D. a stranger, and sent them both to the Sheriff, the Sheriff enters the house, (the outer door being open) and being within the house, and six Bailiffs with him, shut the doors, drew their swords, and presently two of them with their swords drawn, ran up to the chamber where the Defendant and his wife were in bed, (the door being lockt) and they knocking a little, without telling who they were, or wherefore they came, broke open the door, and took him, and took Bond for his appearance upon the Lat. and 40s. for suing out a Supersed. upon the Outlawry, and so discharged him. For this the Sheriff was fined 200l. (viz.) for the unnecessary terror and outrage of this arrest, and for not signifying that he was Sheriff, that the door might have been opened without violence, but especially for discharging the Plaintiff upon the Cap. Utlagatum.

Nota, the Sheriff excusable, though there be no Original or Record to warrant the Process brought to him. The Sheriff at his peril must take notice of the right person, and the right good.

If the Sheriff execute a Capias, and there is no Original to warrant it, or execute an Execution where there is no Judgement to warrant it, yet he is excusable; but if Process come to him to arrest J. S. and he arrests by virtue thereof J. N. or if Execution comes against the goods of J. S. and he takes the goods of J. N. there he is a Trespassor, for he must take notice of the person and of the goods at his peril, but if the Plaintiff comes to the

Buckwood and Beale's Case, Brownlow 1. part. 210, 211.

sheriff,

Sheriff, and ſhews him Cattle, and tells him, they are the Cattle of J. S. whereas they are the Cattle of J. N. there the Sheriff ſhall have an action upon the caſe for this falſe affirmation.

Plaintiff puniſhable for his falſe affirmation, to induce the Sheriff to take either the wrong perſon or goods.

Weaver verſ. Clifford, Bulſt. 2. Rep. 63, 64, 65.

The Sheriff is not to take notice of Error in Proceſs, becauſe he is not a competent Judge thereof, he is only a Miniſterial Officer, to execute ſuch Writs as are directed, which if he omits, he is puniſhable.

Although Proceſs be erronious, yet the Sheriff muſt not take notice thereof.

What the Sheriff may do upon Executions againſt the Goods.

Cr. 44 El. in B. R. Brownlow 1. part. 50. 5. R. 91. Cr. Jac. 555. Semaynes Caſe, Cr. El. 908, 909.

The Sheriff upon a Fieri Facias may not break open the outer door of the houſe to enter and make Execution, but if the outer door be open, then he may well enter and break open any Chamber door, or other door which is lockt; he may likewiſe break open any Cheſt, and take the goods which are therein in Execution, and if he doth not, an action upon the caſe will lie againſt him.

What the Sheriff may do upon the execution of a Fieri Facias. May open a Chamber, or a Cheſt.

Note, He muſt therein avoid all craft and violence, vide ante, Waterhouſe verſ. Saltmarſh.

Day verſ. Buſbitch, 37. El. Rolls tit. Execut. 891.

The Sheriff cannot upon a Fieri Facias take down a Furnace, &c. and ſell it, becauſe this would be waſte, which the Law will never permit.

But Furnace fixt, not to be removed by Fieri Facias.

M. 31. & 32. El. Parke & Moſs verſ. Howe, Rolls tit. Execut. 893.

If a man recovers againſt J. S. as Executor to J. N. and ſues out Execution' de bonis teſtatoris, ſi, &c. & ſi non tunc miſ. &c. de bonis propriis, and afterwards and before Execution made by the Sheriff J. S. dies if the Sheriff doth not find any of the goods of J. N. he may execute the Writ upon the proper goods of J. S. which he had at the time of Execution awarded, although that they are now in the hands of his Executor or Adminiſtrator, without ſuing out a Scire Facias, becauſe they were bound by the award of the Execution.

In ſome caſes the Sheriff may take goods in the Executors hands, without Fieri Facias.

Cr. El. 174. Parks and Moſſes Caſe, Cr. El. 181. Bourcher verſ. Wiſeman, Cr. El. 440. Dy. 219. & Bailes verſ. Domming, Paſc. 16. Car. 2. Reg. Rot. 338. in B. R. Thomſon verſ. Clerk, Cr. El. 504.

So likewiſe if a Fieri Facias is ſued out againſt the goods, and after the Teſte of it, and before the Sheriff execute it, the party ſelleth the goods bona fide, yet they may be taken in Execution in whoſe hands ſoever they come, for they are bound by the award of the Execution.

Goods are bound by the Teſte of Execution.

Upon an action of Trover for goods, the Defendant pleaded a Recovery, and a Fieri Facias thereupon directed to the Sheriff who had ſeized the goods, and delivered them to him in ſatiſfaction of his Execution; whereupon the Plaintiff demurred, and it was reſolved that the Sheriff cannot deliver goods to a Plaintiff, (upon a Fieri facias) in ſatiſfaction of his Debt, for the Sheriff by the Writ is to levy the Debt, and to return his Writ to the Court, that they may adjudge whether Execution is well made or no.

Fieri Facias. The Sheriff cannot deliver goods taken in Execution to the Plaintiff, in the ſame action, in ſatisfaction of his debt.

Ayre, verſ. Arder, Cr. Jac. 73.

The Sheriff may, if he think fit, ſell the goods without a Venditioni exponas, and the ſale ſhall be good.

He may ſell goods by him taken in Execution upon a Fi. Fa. without a Vendit expon.

Rolls, tit. Execution, 900.

If a man recovers damages againſt a Corporation, he ſhall not have Execution againſt every man of the Corporation in their natural capacity, but of the goods of their Corporation only.

How Execution to be levied upon a Corporation.

The

Where goods are undervalued by collusion, the Sheriff or party may be indicted for oppression.

The [illegible]er-sheriff took goods upon a Fieri Facias, and did not sell them to [illegible]f the worth of them, and upon motion it appeared to the Court that he had perswaded the Jury to undervalue the goods, and according to his perswasions the Jury apprized them, and then the sheriff sold them for the same money for which they were apprized. The Court held that this was a grand oppression, and thereupon ordered an Indictment against the Under-sheriff.

Sayers Case, Cr. Jac 526. & Sly vers. Finch Cr. Jac. 514, 515.

Term for years, how to be extended.

How a Term for years must be extended, Vide Chap. Elegit, in the Suppl.

What the Sheriff may do upon Executions against the Body.

Ca Sa. He must not break open the door to execute a Ca Sa.

Upon a Capias ad satisfaciendum, the sheriff must not break open the door of any house to execute it, if he do, he is punishable.

Semayne vers. Gresham, Cr. El. 908.

Judgment against two, and one taken in Execution. Escape.

Two persons were condemned in debt, one of them is taken by a Ca. sa. and afterwards suffered by the sheriff voluntarily to escape; afterwards the other was taken in Execution, and he upon this matter brought an Auidta Querela, because the one is discharged, not by his own wrong, but by the sheriffs act, against whom the party is put to his remedy, but per Cur. this is no cause to discharge him.

Blofields Case, Cr. El. 478.

Newgate is a several Prison, both for London and Middlesex.

A Prisoner in Newgate in London side, shall not be charged with Actions in Middlesex

When a man shall be said to be in Execution, and the Sheriff chargeable with him, before he hath him actually in his custody.

Upon a Ca. Sa. to the Sheriff of Middlesex to take J.S. the sheriff took him, and put him into Newgate, (which is the Common Prison both for London and Middlesex) afterwards Execution came to the sheriffs of London; now although the sheriffs of London are also sheriffs of Middlesex, and Newgate is the prison for both Counties, yet the prisoner shall not be in Execution upon the Writ into London, nor may the sheriffs of London serve this upon him, because though the prison stand in London, yet he is in another County, as he stands charged, for when the Commitment is to Newgate, by force of a Writ to the sheriff of Middlesex, he cannot be said to be within the County of London, though the prison stand in London, for the Counties continue several, and the Prisons several, in respect of the several Commitments.

Coas Case P. 17. Jac. Rolls, tit. Execution, 894.

If one be delivered to the sheriff in Execution by the Kings Writ, the party is presently in Execution in the sheriffs custody, without his laying his hands on him.

Quelsh & Ux. vers. Carpenter, Bulstr. 3. part. 62.

How to be made upon an *Habere facias possessionem.*

Where a common Recovery is had of several houses, the Sheriff may deliver possession in one, in the name of all. But it is otherwise where houses are recovered by Ejectment.

If a Common Recovery be had of divers Messuages, the sheriff upon the Writ of Execution may make Execution in one of them, in the name of all, without going to every one in particular; but if a man is to be put in Execution of divers Messuages upon a Writ of Execution, and the Houses are in the possessions of several men, he ought to go to every house particularly, and to deliver seisin thereof, for delivery of seisin in one, in the name of all, when they are in several mens possessions, is not sufficient.

Rolls tit. Execut. 886. Floyd vers. Bethel. Rolls, tit. Execut. 886.

Land may be delivered in Execution, without setting forth the meets and bounds.

If a man upon an Ejectment, for 40. acres of Land, recovers 30 and not the residue, upon the Habere fac. possess. the sheriff may

Rolls tit. Execut 886.

may deliver three or more of the Acres, in the name of the whole, without dividing of it by metes and bounds.

Ibid. If an Habere fac. possess. go to the Sheriff, to put a man in possession of twenty Acres of Land, the Sheriff ought to give him twenty Acres in quantity, according to the custom of the Countrey where this is, and not according to the Statute. *If the writ is for 20 acres, so much by estimation of the Countrey must be delivered.*

Ibid. & 22. Ass. 24. per Thorpe. If a man recover Rent or Common, whereupon a Writ of possession issues out, and the Sheriff comes upon the Land, and delivers seisin of the Rent or Common, by word only, this is well done, and the recoveror is in actual possession by it. *Upon a Recovery of Rent or Common; the Sheriff may deliver possession by word only.*

Semaynes case, 51 R. 91. The Sheriff upon an Habere fac. possessionem, after a demand made to open the door, may break open the door, to deliver possession of the house. *Upon an Habere fac. possess. the Sheriff may break open the door.*

SECT. 3.

Of Executions by Elegit, and Extents.

Cowly vers. Lideot. Bulstr. 2. Rep. 97. 4. R. 65. a. An Extent upon an Elegit must be by inquisition, per sacramentum duodecim proborum & legalium hominum, &c. *Elegit how to be executed.*

Garraway vers. Harrington, Cr. Jac. 567. So likewise must an Extent, upon a Recognisance or Statute, otherwise it is Error. *Extent how to be executed.*

Sparrow vers. Mattersake, Cr. Car. 319. Tr. 9. Car. Although Elegits, &c. are always directed to the Sheriff, yet a Bailiff of a Liberty may execute them within the equity of the Statute, which grants Elegits. There is a Case to this purpose in Tr. 9. Car. where, upon a Demurrer the Case appeared to be thus, The Sheriff returns upon an Elegit that the party had not any Lands, but only in E. and that J. S. Bailiff there, had the Execution and Return of all Writs, who enquired and returned an Extent by Inquisition, and that the Bailiff delivered the moiety of the Land, so extended to the party, and the Plaintiff by vertue of that Extent entred and intitled himself, and hereupon the Court held, *Extent may be executed by a Bailiff of a Liberty.*

1. That the Extent there made by the Bailiff of the Liberty by warrant from the Sheriff, was good.

2. That the Jury ought to find all the Land, and that the Bailiff (or Sheriff where no Liberty is) shall deliver the moieties, and not the Jury. *The Jury must extend the Land and the Sheriff must deliver it.*

Fulwoods case, 4 R. 65 a. b. W. 2. c. 18. So likewise where the Sheriffs of London grant their warrant to a Serjeant at Mace, to extend Lands upon an Elegit, it was adjudged, that the Execution was well executed, for the Sat. of West. 2. c. 18. which provides that Process shall be made to the sheriff, is to be extended by equity to all other immediate Officers, to every other of the Kings Courts of Record, & eo potius, because the Elegit and Fieri Facias are coupled together, and limited, both to be executed by the sheriff, and yet without question, a Serjeant at Mace may execute a Fieri Facias. *An Elegit executed by a Serjeant at Mace. The statute of W. 2. cap. 18. is extended to all Sheriff immediate Officers.*

SECT. 4.

What Lands shall be delivered in Execution, and when.

Huyt vers Cogan, Cr. El. 482, 483.

The Sheriff delivered a moiety of the land in execution, and afterwards received a second Writ.

Whether a moiety of a moiety, or the entire remaining moiety shall be delivered in Execution.

Two persons recovered severally against one in Debt, and he who had the first Judgment, first sued out an Elegit, and had a Moiety delivered to him; afterwards the other sued out an Elegit, and the Sheriff prayed the advice of the Court, what return he should make, whether he should deliver the other Moiety of the whole, which was all that remained to the Debtor, or but a Moiety of that Moiety, and it was the opinion of the Court, that he should return but the Moiety of that Moiety which was left, but they advised the Sheriff to return the special matter.

Entail Lands not extendible by Statute or Elegit.

Entailed Lands in the hands of the Heir, are not extendible neither by Statute nor Elegit. Sir Jo. Ashburnham, & Dom. St. John, Cr. Jac. 85.

But ancient Demean may.

But Lands in ancient Demean are extendible upon an Elegit. Cox vers. Barnsly, Hob: 47.

A Reversion how it may be extended.

So likewise where a man Leases for years, rendring Rent, the Reversion may be extended upon an Elegit, during the Lease, and the Tenant by Elegit shall have the Moiety of the Rent. Sir Tho. Cambels case, Rolls, tit. Execution, 894.

Lease for years, how to be extended.

Sale.

Mistake by the Sheriff.

General Return.

An Inquisition upon an Elegit found that the Defendant was possessed of a Lease for years, commencing at Michaelmas 2. & 3. P. & M. whereas in rei veritate, it began at Michaelmas 3. & 4. P. & M. and the Sheriff made sale of it according as the Jury had found it, and the Court held that the sale was not good, because there was no such Lease which the Sheriff had sold, and there being no such Lease, then consequently the sale is void; but if the Jury had found that the Defendant was possessed of such Lands, pro termino diversor. annor. adhuc ventur. and then had apprized it, it had been good enough, although there had been no certain beginning nor ending set forth, quod Nota. Palmer vers. Humfryes, Cr. El. 584.

SECT. 5.

What the Sheriff muſt do when a *Superſedeas* is ſent to him.

Dy. 98.

A Fieri Facias came to the Sheriff, to levy goods, who returned, that he had taken goods in his hands to the value of part of the Debt, and that they remained in his hands, pro defectu emptorum, and that before the Return of the Writ, there came a Superſedeas upon a Writ of Error to him, which Writ he Returned annexed to the Fieri Facias. It was the opinion of the Court, that notwithſtanding the property was not altered, yet a Venditioni exponas ſhould be awarded.

After goods are taken in Execution (although they are not ſold) a Superſed. comes too late.

Mich 15. Car: in B. R. Marſh 54.

It was agreed by the Court, that the ſhewing of a Writ of Error to the Sheriff, was a ſufficient Superſedeas of the Execution.

The ſhewing of the Writ of Error to the Sheriff, is a Superſed. in Law.

Price verſ. Alington, Cr. El. 918.

Fr. 39: El. Goldſ. 96.

In an Action of falſe Impriſonment, the Caſe was thus, One Recovers in debt, and had a Ca. Sa. delivered to the Sheriff, who made a warrant to his Bailiff to do Execution, afterwards and before the Ca. Sa. executed, a Superſed. was delivered to the Sheriff, but the Bailiff having no notice of the Superſed. executed the Ca. Sa. The whole Court were of opinion, that this was not falſe Impriſonment in the Bailiff, he not having notice of the Superſedeas.

A Superſed. comes too late to the Bailiff, if it come after he hath taken the body, although the Sheriff had it before.

Withers verſ. Henly, Bulſtr. 3. Rep. 96, 97. ſee the ſame caſe in Cr. Jac. 97.

If a Capias comes to take the body, and before it is executed, a Superſed. comes, there the Sheriff muſt diſcharge him, but if he is firſt taken, and then a Superſed. comes, the Sheriff muſt at the Return of his Writ return the body, together with the Superſedeas.

If a Superſed. comes to the Officer before the Writ executed, it is time enough, but if afterwards, how to Return it.

But if a man is taken in Execution, and the Plaintiff at whoſe ſuit he is taken comes to the Sheriff, and tells him, that he hath releaſed the priſoner, and therefore he ſhould deliver him out of priſon, and the Sheriff doth not ſo, but ſtill keeps him, here an Action of falſe Impriſonment lies againſt the Sheriff.

A Priſoner in Execution may be diſcharged by Parol. And to keep the priſoner afterwards is falſe impriſonment.

Mrs. Bowes caſe, Hetleys Rep. 30.

A Superſedeas was prayed, becauſe the Sheriff by virtue of a Bill of Middleſex, had arreſted a man in London, but the Court would not grant it, becauſe a Superſedeas never iſſues out but when a Writ erronice emanavit, but the remedy in this caſe is, to bring an Action of falſe Impriſonment.

No Superſed. ſhall be granted where an arreſt is made in London, by virtue of a Bill of Middleſex.

King verſ. Hill, Cr. Jac 43. Yelv. 57.

A Superſed. was delivered to the Sheriff, to ſtay the Return of a Diſtring. at the Aſſiſes, which the Sheriff did not obey, but Returned it notwithſtanding; and it was therefore adjudged Error, and the Judgment reverſed.

Where it is Error to proceed after a Superſed.

As the Sheriff was going to execute an Habere fac. poſſeſſ. there

The Sheriff must obey a Supersed. which comes to him before Execution actually executed.

came a Supersed. to him, which he refused to obey, but delivered possession, and thereupon the Court granted an Attachment against the Sheriff, and a Writ of Restitution to the party. Thomas vers. Owen, Bulstr. 2. part. 194.

SECT. 6.

Where the Sheriff shall discharge himself by returning a *Rescous*, and where not, and when well returned.

Rescous is a Return to a Fi. Fa.

The Sheriff took goods upon a Fieri Facias, and at the return of the Writ returned a Rescous, the Court held the Return to be void, for it is of goods, of which no Rescue can be, and he ought to raise posse Comitatus. Sheriff of Surry vers. Adderson, Hetley 145

But upon a mean Process it is a good Return, and the reason why.

But upon an Arrest upon a mean Process, where a Rescous was made, and an Escape brought against the Sheriff, the Sheriff pleaded the whole matter, and after divers Arguments it was adjudged for the Sheriff, for the Arrest being but upon mean Process, and not upon Execution, the Sheriff is not bound to take Posse Com. with him, and therefore to such a Process Rescous is a good Return; but if the prisoner had been once in the Goal, the Sheriff ought at his peril to keep him, and a Rescous from thence is no excuse for him. So likewise if a prisoner is taken upon a Ca. Sa. or a Cap. Utlagat. after Judgment, then Rescous is no Return, for the Sheriff at his peril ought to keep his prisoners in Execution. May vers. Proby, & al. Cr. Jac. 419. & Hodges, & Marks, Cr. Jac. 485, 486. but Waldow vers. Lambert in Cr. El. è contra.

But not upon a Ca. Sa. or Cap. Utlagat.

A Rescous Returned with a simul cum, void Rescusserunt.

If the Sheriff return a Rescous that J. S. simul cum B. rescusserunt D. out of his custody, this is no good Return against B. because this is not any averment that B. rescued him, neither is it any good Return against J. S. because it is rescusserunt, in the plural number, which is insensible. M. 14. Car. B. Reg Rolls, tit. Return, 457.

The Sheriff shou'd return the place where the Rescous was made.

The Return must likewise be certain, and therefore where a Rescous was returned, and no place mentioned where the Rescous was made, it was adjudged void for Non constat to the Court, whether the Arrest and the Rescous were within the County and Jurisdiction of the Sheriff. Walfrestons case, Yelv. Rep. 51. for Dy. 69.

It ought to be certain. Rescous upon a Bailiff how to be Returned. Warrant.

So also where the Sheriff Returned a Rescous upon A. B. cui fecit warrantum, but the Sheriff did not aver that A. B. was his Bailiff. 2. He did not say for what cause he made his warrant, so that it appears not whether it was lawful or not, and for these reasons it was quashed. M. 49. Styles 155.

upon a Bailiff how to be Returned.

The Sheriff Returned a Rescous by A. and B. upon his Bailiff to whom he directed his warrant to execute his Writ, and it was moved that the Return was insufficient, because it doth not appear that the Bailiff had Returna brevium, which ought always to be mentioned upon the Sheriffs Return, and all the Court were of the same opinion, if the Sheriff had Returned it as the Return of Lady Russel & Woods case, Cr. El. 780, 781. Styles 417. acc.

the

the Bailiff of the Liberty, but he Returned it in his own name, wherefore it shall be intended his own Bailiff, and so good.

Kent. vers. Elwis, Cr. Jac. 241, 242.

An Action was brought for rescuing one J. S. from the Deputy of the Bailiff of a Liberty, and it was moved that it was not good, because it ought to have been alledged, that he was rescued from the Bailiff himself, or from the Sheriff, sed non allocatur, for there is a difference between an Action upon the Case, where the Plaintiff must shew the truth of his Case, as in rei veritate it is, and the Return of a Rescous, or an Indictment for Rescous, for there it must be said, that it was either to the Bailiff himself, or Sheriff himself.

Retorn, that Rescous *was made from the Bailiffs Deputy, not good.*

Hodges vers. Marts, & al. Cr. Jac. 485, 486.

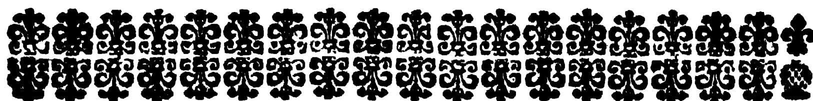
Also where a Warrant was directed to two persons, which were not known Bailiffs, and they in January about six of the clock in the evening, entred the house where the Defendant was, (the door being open) and one of them having the Warrant in his pocket, and seeing the Defendant, said these words to him, I do arrest you by virtue of a Warrant that I have, but he did not shew his Warrant, nor had it in his hand, nor told him at whose suit it was, and thereupon the Defendant was rescued, Et si, &c. And it was resolved, 1. That this Arrest without shewing the Warrant, and without telling at whose suit, until the other demanded it, was legal. 2. That he need not shew the Warrant, until the other obeyed and demanded it. 3. This Arrest being at six of the clock at night, the door being open, was good enough. 4. It was held that for this Rescous the Action was well maintainable against the Defendant by the Plaintiff, for he hath loss, and cannot have his action against the Sheriff.

Arrest at six of the clock at night in January.

Warrant not shewn. Rescous. *When he need not shew his Warrant.*

May vers. Proby, Cr. Jac. 419. accord.

Action upon the case lyes for a Rescous.



CAP. 4.

Of Retorns in General.

SECT. 1.

Who are to Retorn Writs.

Where Coroners.

Goodwin & Franklins case, Vouch in the 5 R. 37. Baynhams case, 32 H. 8. 18 Eliz.

SEveral other persons have the retorning of Writs, as well as Sheriffs; as in cases of Challenges, &c. Writs are directed to the Coroners, and to be retorned by them; but then that must appear upon Record, which if it doth not, it is Error, and not remedied by the Statute of Jeofailes.

Where Bailiffs of Liberties. If removed from their Office, the Retorn void. A warrant to two Bailiffs, retorned by one of them, good. But not so, where there are two Sheriffs.

Palmer vers. Porter, Cr. El. 512. Palmer vers. Marsh. Tr. 39 El. Rolls tit. Retorn, 458. Lamb vers. Wiseman, Hob. Rep. 70.

Where a Warrant is directed to the Bailiff, &c. of such a Liberty, to make Executions, and afterwards, and before the execution thereof, they are removed from their Office, and afterwards they retorn it, this Retorn is absolutely void: But if a warrant is directed to two Bailiffs of a Franchise to execute it, and one of them executes it, the Retorn of the one in the name of both of them is good enough; but if one Sheriff of London makes his Retorn without his fellow, this is no Retorn at all, and cannot be holpen by the Statute of Jeofailes, because the Court knows, that one Sheriff there, is two persons.

Retorn by two Coroners, where there were four, is Error.

But help'd by the Statute of Jeofailes.

Hob. 70.

But where a Ven. fac. was returned by two Coroners, and the Distringas by three, whereas at the time of the awarding of the Ven. fac. and Retorn thereof, there were four Coroners; it was agreed by the Court, that this was Error at the Common Law, for Coroners as Ministers ought all of them to joyn, but as Judges they need not; but now this imperfection is aided by the Statute of Jeofailes.

The Sheriff must endorse his name to all Retorns, or else it is Error. Distring. Ven. fac. *and all judicial Process.*

Holdsworth vers. Procter, Cr. Jac. 188. 5 R. 41. M. 36 El. in B.R. 5 R. in Rowlands case

Where the Sheriff or other Officer retorns a Writ, he ought always to endorse his name on the Writ, otherwise it is an incurable Error, and it hath been so adjudged, (although it hath been objected, that in case of a Distringas or Ven. fac. which are Judicial Processes, it might be amended) for as the Court there observed, the Sheriffs name not being to it, it is no Retorn.

A Retorn by one who hath no authority to make it, is void. Album breve.

Bethyll vers. Parry, Cr. Car. 136, 137.

So likewise, where the Writ is retorned by one who hath no Authority to do it, it is the same as if it were retorned Album breve.

Qu. Impedit.

Booten vers. Ep. sc. Roffen. Hutton 24.

Upon a Quare Impedit against the Bishop of R. who pleaded, that he claimed but as Ordinary, and that the Clerk which the

Plaintiff

Plaintiff presented had before contracted with the Plaintiff Symoniacally, and therefore he refused him, and that the Church was then void, and so remained void; whereupon the Plaintiff had a Writ to the Archbishop of C. who retorned, that before the coming of this Writ, the Church was full, viz. of one D. ex collatione of the Defendant; it was holden by the Court, that this Retorn was insufficient, for it is clear, although the six months pass, yet if the patron presents, the Bishop ought to admit, although it be after the title devolved to the Metropolitan; and in this case the Bishop (who is the Defendant) is bound by the Judgment, and the Writ is, that notwithstanding the claim of the Bishop, he admit his Clerk, for the Bishop is but a Servant, and ought to execute the Process of the Court.

Breve Archiepiscopo.

Insufficient Retorn.

Bishop is but a Servant to the Court, as to such matters.

Boswells case, 6 R. 52.

Also in a Quare Impedit, although it be found ex officio, that the Church was full of B. who was a stranger to the Writ, and it doth not appear whether he came in by better title than the plaintiff had, yet the Plaintiff ought to have a general Writ to the Bishop, and the Bishop cannot retorn upon it, that the Church is full of another, for no issue can be joyned between the Plaintiff and him, for he hath no day in Court.

Qu. Impedit.

Breve Episc. *He cannot retorn plenarty.*

Quod summoniri possint, *for* per quod summoniri possint, *naught against two, and doth not say,* nec eorum aliquis.

Lancelot vers. Johns. Cr. El. 50.

In Debt against two persons the Sheriff retorned quod non habuit bona aut catalla quod summoniri possint, whereas it should have been, per quod summoniri, &c. 2. it ought to be, nec eorum aliquis habet, and for these Errors the Judgement was reversed.

Allen vers. Walter, Brownlow, 1 part. 127. Hob. Rep. the same case.

In Dower the Sheriff retorned, pleg. de pros. J. D. & R. R. and the names of the summoners, and that after the summons made, and by the space of 14. dayes and more before the Retorn of the Writ, at the most usual Church-door of M. magna, where part of the Tenements lay, upon the 27th. of Octob. being the Lords-day, immediately after Divine Service, he publickly proclaimed all and singular the things contained in the Writ to be proclaimed, according to the form of the Statute: Exception was taken hereto, First, because the Proclamation was not made at the Church-doors where the land lay, the land lying in two Parishes; the Court was of opinion, that making proclamation at any of the doors of any of the Churches, was sufficient; but because he retorned, that he had proclaimed all and singular in the Writ contained, because he did not express what, for this very cause the Retorn was held to be too general and insufficient.

Dower. Summoners. 14 dayes. At the Church-door.

Proclamation.

Proclamation where to be made, when the land lies in two Parishes.

General Retorn void.

Thyn vers. Thyn, Styles 67.

In Dower after a Judgment by default, and a Writ of Enquiry issued out, and seisin delivered, and Judgment thereupon, Error was brought and assigned; First, that the Original Writ appears not to be retorned according to the Statute, for the year doth not appear when it was retorned. 2ly. The Proclamation made by the Sheriff doth not appear to be where the land lay. 3ly. The Retorn doth not mention, that the proclamation was after the Summons, as it ought to be, as it is in Allens case in Hob. 4ly. It is not said, that he did make Proclamation upon the land. 5ly. It appears not, that the Proclamation was in the Parish where the Summons was made, as the Statute directs.

Dower. Enquiry.

Proclamation where to be made.

Allen vers. Walter, Hob. 133.

To these it was answered by the Counsel:

1. That

The objections answered. 1. That the Retorn of the Original shall be intended to be in the year of the Reign, and not of the age of the King, though the word Reign be omitted.

Where lands lye in divers Parishes. 2. The lands lying in divers Parishes, Proclamation being made at the church-door of any of the Parishes, is good enough.

3. To the third; the Proclamation is said to be made, prout breve postulat, and that shall be supposed duely done, and implies all requisite circumstances, and he cannot make another Retorn, and it is impossible to be otherwise.

4. To the fourth; it is necessary to Retorn the place of the Summons, it being retorned that it was made secundum formam statuti, supplies the rest. It was afterwards in fo. 77. argued again and adjorned. Styles 77.

But the Writ of Error was afterwards discontinued, for a defect in the Certificate of the Summons, so that these points were not resolved. Yet they may serve to warn a carefull Sheriff how to avoid the like Questions. Styles 143.

Dower. So likewise in a Writ of Error, to reverse a Judgment given in a Writ of Dower, this exception was taken. Fairfax vers. Fairfax, Styles 236.

No Proclamation of the Summons retorned. 1. That the Original was not well retorned, for there appears not to be any Retorn of the Proclamation of the Summons; and though the party appear, yet it was said, it is not helped thereby.

As to this exception Rolls Chief Justice answered, that the not retorning of Proclamation of Summons, is not material; for the Summons is only to make the party appear, and he hath appeared in this case; likewise the Statute extends to it, if it were not good without it. *Summons is only to make the party appear.*

The sheriff upon a Lat. retorned, that before the Retorn of the Lat. he was delivered by Hab. Corp. Per Master of the Rolls. Upon a Latitat, the Sheriff retorned, that he virtute inde had arrested the Defendant, and that tali die, afterwards and before the Retorn thereof, a Habeas Corpus came to him to bring the body immediately into Chancery, which was done accordingly; and the Prisoner was there discharged by the order of the said Court; and this was held a good Retorn, for the Sheriff is bound to obey the Kings Writs, and to execute them. The truth of the case was, the party was brought before the Master of the Rolls, and he discharged him; Et per Cur. this is a very ill act of the Master of the Rolls. Leonard. 1 pt. 145. Cary vers. Davis.

To Retorn that the Lat. was retornable upon a day which is not dies Juridicus, no good Retorn. Escape. Wherefore the party was retaken. A Latitat was directed to the Sheriff of London, to take the body of J. S. the Writ was retornable die Jovis, &c. which was All-Saints day; the Sheriff took the party, and retorned, that because the Writ was retornable upon a day which was not dies Juridicus, he suffered the party to go at large: It was holden by the Court, that the Retorn was insufficient, for the Writ was good, and the detaining of the party by vertue thereof was lawfull, although he could not have the party there at the said day, wherefore the Sheriff was compelled to bring the party into Court, which afterwards he did accordingly. Poph. 205.

Golson vers. Bennet, H. 7. Jac. Rolls, tit. Retorn 459.

In an action of debt against the heir, if the Defendant pleads that nothing discended to him but one house in D. and thereupon Judgment is given for the Plaintiff, & quia ignorat. of what value the house was, there issued out a Writ to the Sheriff, to enquire of the value, and also to make Execution, the Sheriff hereupon Retorned, that it was sold by the Defendant before the Writ came to him, and adjudged no Retorn, because it doth not stand with the Judgment; but in an action of debt against an Executor, the Defendant confesseth the action, whereupon a Fi. Fa. issued out, here the Sheriff may retorn a nulla bona, for this well stands with the Judgment, because he confesseth only the action, not that he hath goods.

The heir pleads Riens per discent præter. Writ of Enquiry Retorn. Repugnancy.

Newman vers. Babington, M. 8. Jac. B. Reg. Rolls, tit. Retorn 459.

Fi. Fa. against an Executor, where he confesseth the action, nulla bona, is a good Retorn.

Doily vers. White, Bulstr. 2. part 80.

A Warrant upon a Ca. Sa. issued out against a woman which was then a feme sole; but at the time of Arrest she is married, it is no Retorn for the Sheriff to say that she was married, or Non est inventa, but he must take her notwithstanding, for otherwise he would take upon him to falsifie all the proceedings which have been before; but if a Capias issues out against a feme sole, and before she is thereupon taken, she marries, here if she be taken upon this Process, false Imprisonment well lies, and the Sheriff may well Retorn Non est inventa, the diversity is apparent, quod nota.

A Feme sole is sued to a Judgment, and after Execution taken out, she marries, yet she may be taken as a Feme sole. But è contra in case of a mean Process.

Upton vers. Wells, Leon. 1. R. 142.

Upon an Habere fac. possessionem, the Sheriff Retorned, that in the execution thereof he took the Plaintiff with him, and came to the house recovered, and removed thereout an old woman and 2 children, which were all the persons which upon deligent search he could finde in the house, and delivered to the Plaintiff peaceable possession to his thinking, and afterwards departed, and immediately afterwards, three other persons which were secretly lodged in the house, expulsed the Plaintiff again, upon notice of which he returned again to the house to put the Plaintiff in full possession, but the others did resist him so as without peril of his life he could not do it; and upon this Retorn, the Court awarded a new Execution, because the first Writ was not executed, and also awarded an Attachment against the parties.

Upon a writ of possession, and after possession delivered. Disturbance by others which were hid in the house. Sheriff returned that he could not expel the force, wherefore new Execution and Attachment against the parties.

Floyd vers. Bethyll, P. 15 Jac. B. Reg. Rolls, tit. Retorn 459.

Upon an Habere fac. possess. the Sheriff Retorns that he was always ready to deliver possession, and appointed divers times for the Plaintiff to come and receive possession from him, at which times he was there ready to deliver him possession, but no body came one the Plaintiffs behalf to receive it, and this was adjudged a good Retorn.

Upon a writ of possession, the Sheriff Retorns, that he was always ready to deliver possession, and that the Plaintiff never came to receive it.

Dy. 11. El. 278

Also upon an Habere fac. Seisinam in Dower, the Sheriff Retorned, that he offered her seisin of the third part, and shewed to the Court what made the third part, by metes and bounds in certain, according to the tenour of the Writ, and she refused to receive them of him, and it was the opinion of the Court hereupon, (notwithstanding the exceptions made to the incertainty of the Retorn) that it was a good Retorn, that the Court refused to award an Habere fac. seisinam de novo, for that, they said, would be a new president, the like whereof hath not been seen.

Upon an Habere fac. seisinam in Dower, the Sheriff Retorns an Offer and Refusal.

Quod quer. non est prosecut. bre. &c. no Retorn.

Floyd vers. Bethill, P. 15 Jac. Rolls, tit. Retorn 460.

Upon an Habere fac. seisinam, the Sheriff Retorned that the party who ought to take the seisin, Non est prosecutus bre. the Court

was divided whether this Retorn were good or no, but the better opinion seemeth to be, that the Retorn is void, for the uncertain intendment thereof.

An Inquisition taken the same day on which it was retornable good.

The Sheriff took an inquisition upon the same day on which the Writ was Retornable, and yet it was held a good Retorn, but they held if it had been taken the next day after, and before the quarto die post, that it had been void. Bugberds case, Cr. El. 180.

An Inquisition upon an Elegit taken by the Bailiff of a Liberty, and good.

The Sheriff sends his Warrant to a Bailiff of a Liberty, to make an Inquisition, and an Extent upon an Elegit, who doth it accordingly, and it was adjudged that it was well made by the Bailiff, and it was likewise adjudged that the Jury shall extend the land, and the Bailiff or Sheriff (where no liberty is) shall deliver the moieties, and not the Jury. Sparrow vers. Mattersock, Cr. Car. 319.

Extendi facias *Seisure.* Bre. de Prerog. Regis.

Special Return. until a Liberate, there is no property in the Conusee.

Upon an Extendi fac. upon a Stat. Staple out of the Chancery, the Sheriff extended the lands of the Defendant, and he prized the goods, and seized them into the Kings hands, but did not deliver them; afterwards a Writ de Prerogativa Regis, came to the Sheriff, commanding him to leavy 100 l. &c. which Writ was delivered to him after the day of the Retorn of the first Writ, but the first Writ was not then Retorned, & thereupon the sheriff retorned the whole matter into the Exchequer, and he was amerced by the court for making this Retorn, and was forced to execute the Writ de prerogativa, for till a Liberate no property is in the Conusee, but they had been priviledged from all other Executions, but this of the King. Scriffellowes case, Dy. 3. E. 6 67.

Sci. fa. vers. execut. & hered. *He Retorns that there are no Executors, but Retorns an heir. But he did not Retorn him heir of any land.*

A Sci. fac. was sued out at the Kings suit against Executores testamenti, & ultim. volunt. predict. M. & hered. terrarum & tenementorum, &c. At the day of the Retorn the Sheriff Retorned that the said M. had no Executors, but that Scire fecit W. H. Mil. fil. & hered. dicti. M. quod sit, &c. And upon a Writ of Error brought, it was assigned for Error, that the Retorn was not good, because the Sheriff did not retorn him heir of any Lands or Tenements, but generally that he had summoned the heir of M. This point was not resolved, the cause being compounded. Herberts case, 3. Rep. 13.

Sci. fa. *upon a* Recog. vers. hered. & Terr-tenentes. *He retorned as to the Ter-Tenants, but nothing as to the heir. Void Retorn.* Stat. Jeofailes *doth not help it.*

Upon a Sci. fa. upon a Recognizance in Chancery against C. the Defendant was retorned dead, whereupon a second Sci. fa. issued out against the heir, and Terr-tenants of the land of C. which he had tempore Recogn. vel postea, whereupon the Sheriff retorned the Terr-tenant of such lands, &c, but omitted to retorn any thing concerning the heir; and three Judges were of opinion, that this Retorn was void, because the Plaintiff names and sets forth that there is an heir, and there is no Retorn quoad the heir, so as to him it is, quasi album breve, and no Retorn; neither is it aided by the Statute of Jeofailes, for the Statute helps only insufficient Retorns and mis-Retorns, but where it is album breve, it is no Retorn, and so out of the Statute. Eyres vers. Taunton, Cr. Car. 295, 296. 312, 313. See before in this Chapter.

It is no plea against the Retorn of the Sheriff, to say that he was not Tenant.

Upon a Sci. Fa. against the Terr-tenants, upon a Judgment in debt, the Sheriff retorns quod Scire fecit J. B. Tenenti unius Messuagii, &c. and hereupon comes J. B. and pleads that he is not Tenant against the Retorn of the Sheriff, and it was thereupon demurred, and adjudged to be no plea. Flud vers. Pennington, Cr. El. 872.

A Writ

Dyer 73. a. Quære, but in 2 Instit. 171. Resolved. 32 H. 8.

A Writ of Partition was brought upon the Statute of 32 H. 8. the Defendant confessed the Partition, and a Writ awarded to the Sheriff, quod partitio fiat; the Sheriff returned the Partition by 12 men: One of the parties surmised an inequality in the Partition, and prayed a new Writ, but afterwards resolved, that the first Partition being made by writ, shall stand good. *Partition.* *Inequality surmised.*

Bagnall vers. Harvy Godbolt, 265.

In a Writ of Partition, it was found for the Plaintiff, and a writ awarded to the Sheriff, that he should make Partition; and the Sheriff did thereupon allot part of the Lands in severalty, and for the other part, that the Jurors would not assist him to make the Partition; upon this Return an Attachment was prayed against the Jurors, and a new writ prayed to the Sheriff; but the Court doubted what to do in it, and took time to advise. *Partition.* *He retorns, that as to part the Jurors would not assist him.*

Bethells case, Cr. Car. 570.

A Venire fac. was returned, per T. H. Mil. nuper Vic. Com. præd. whereupon it was alledged to be Error, it appearing to be returned by one who was nuper Vic. Sed non allocatur; for although the writ be returned by J. S. the Sheriff, at the time of the Grand Sessions, when the action was tryed, as a writ delivered to him by T. H. his Predecessor, in exitu ab officio, with this Return endorsed; yet it might be well intended, that the Panel was made and annexed in the time when he was Sheriff. *Retorn by the name of nuper Vic.*

Bethyll vers. Parry, Cr. Car. 189.

Likewise where a Venire was returned in this manner; per T. R. Vic. istud breve cum panello annexato mihi deliberat. fuit per T. H. Mil. nuper Vic. in exitu ab officio suo, & sic indorsat. T. H. Mil. nuper Vic. and it was moved, that it being returned by the name of nuper Vic. it was no more than if it had not been returned at all, for a void Return, is as no Return; but the Court over-ruled this Exception upon the reading of the Record. See the Case at large. *Another Retorn by the name of nuper Vic.*

Stubbs vers. Rightwise, Cr. El. 102.

Per Curiam; If Judgement be given againg an Executor upon a Demurrer, and Execution awarded, the Sheriff cannot return, nulla habet bona Testatoris, but is to return a Devastavit, as if it had been found against the Executor by Verdict, because he hath charged himself by his own plea. *Upon a Demurrer by an Executor, the Sheriff cannot to a Fi. fa. retorn a nulla bona, but a Devastavit.*

Rolls tit. Retorn, 559.

But where the Defendant confesseth the Action, there the Sheriff may return a nulla bona, for this stands well with the Judgement. *But here nulla bona is good.*

Rolls tit. Retorn, 460.

Upon a Fi. fa. against an Executor, the Sheriff returns, quod nulla habet bona Testat. in Balliva sua, prout constare poterit; and this was held a void Return, because the Sheriff at his peril ought to take notice whether he hath Goods or no. *Likewise quod nulla bona, &c. prout constare poterit is no Retorn.*

Pas. 7. E. 6. Bendlows 23.

In Debt against Executors, they pleaded, plene administravit; it was found they had Assets, &c. And afterwards there went out a Fi. fa. to the Sheriff, who returned, that they had not any thing within the County; and it was holden a good return, because it might be, that the Jury found Assets in another County, as they might well do if they will take notice of it, and yet this Verdict shall not bind the Sheriff. *After a Verdict upon plene administravit, and Fi. fa. thereupon, nulla bona is a good Retorn.* *Assets in a Foreign County.*

No averment against the Return of the Sheriff.

Although a man cannot aver against the Return of the Sheriff; yet he may say, that he who hath endorsed his name on the backside of the Writ was not Sheriff, because by the Common Law, until the Statute of E. 2. no Sheriff nor Officer used to put their names to their Returns; and therefore this averment, that he which made the Return is no true Officer, is not taken away by the Statute, but remains at the Common Law.

Arundel vers. Arundel, Plo. 33, 34, vide Cr. Jac. 11, 12. E. 2.

Challenge to the Array, because he that made the pannel was not Sheriff.

After issue joyned, and the Jury appeared, the Defendant challenged the Array ore tenus, because it was returned by J. S. two days after he had received his Writ of discharge; and the Court held, that he could not challenge it for that cause, because it would be a direct averrment against the Record, for it is returned by him as Sheriff, and the Return accepted; but the Court advised him to make his Challenge to the Array, because it was made in favour of the party: And issue being thereupon joyned, all this matter was given in evidence, the Court thereupon directed the Tryers, that it was not duely made and returned, for it was without warrant, whereupon the Array was quashed.

Hore vers. Broome, Cr. El. 369.

Error brought for Non-summons at the Church-door.

The Sheriff returned a summons.

Averrment.

Upon a Writ of Error brought, it was assigned for Error, that the Defendant was not summoned at the Church-door, according to the Statute of 31 El. cap. 3. and that by reason of his default a grand Cape was awarded, and Judgement given against him, and so he lost his land by default, and indeed the Sheriff returned him summoned at the Church-door: And it was thereupon demurred, whether he should have this averrment or no, or should be put only to have his action on the Case against the Sheriff; Gawdy Justice was of opinion, that it was error, and might well be assigned, but all the other Justices è contra, for that the Common Law if the Sheriff had returned the party summoned, where he was not, and thereupon a grand Cape was awarded, there was not any remedy but a writ of Disceit, for the Judges ought to credit the Officers, and it is not any Error in them to award a grand Cape: So here, for as much as it is of Record before them, that the party was summoned according to the statute, they are bound to award a grand Cape; and it is not error, and this statute doth not intend to give other remedy than was at the Common Law for the Tenant; but Popham Chief Justice conceived, that the party might have a writ of Disceit, if the Proclamation of Summons was not made according to the Statute, because he is not summoned according to Law; but Gawdy and Clench Justices, è contra, because it is a good summons by the Summoners upon the Land.

Col. et vers. Marsh, Cr. El. 371. & 367, 368. 31 El. cap. 3.

Cr. El. 367, 368. Goldsborough, 128.

No remedy but a Writ of disceit.

Exposition of the statute of 31 Eli. cap. 3.

Disceit lyes for not making proclamation according to the Statute.

The Sheriff cannot retorn, that the warrant came adeo tarde, &c. to his Bailiff, &c.

If the Sheriff return, feci retornum istius brevis G. & L. Ballivis Libertat. G. qui habent retornum brevium & executionem eorundem qui mihi respond. quod adeo tarde receperunt, per manus Attorn. querentis, quod nihil inde facere potuerunt; this is held to be no Return, for when he says that he returned the writ to the Bailiffs, it is thereby intended, that it was time enough, for he ought to see that it be delivered to the Bailiff in convenient time, so that the Sheriff hath accepted the answer of the Bailiff contrary to his own Return, and therefore it is his default.

Rolls tit. Retorn, 451.

That Executions are well executed, although they are never Retorned.

Nota, Although the words of a Ca. Sa. are conditional, ita quod habeas corpus ejus, &c. yet the Execution thereof is good, although

Fulwoods case 4 R. 6, 7.

although the Writ were never returned; so likewise of a Fi. Fa. or habere facias possessionem, and generally of all other Writs of Execution, which are the final Process, and after which no Judgement is to be given: But in case of an Elegit, where an Inquisition is to be taken, it is otherwise, for there the Writ ought to be returned, to the end that the Court may adjudge upon the sufficiency or insufficiency of the Inquisition.

What Executions are of no effect, until they are returned.

SECT. 2.

What the Sheriff must do upon a Writ *de Ventre inspiciendo.*

Lady Willoughby's case, Cr. Eliz. fo. 566.

The substance of the Writ de Ventre inspiciend.

THis Writ is granted out of the Chancery, commanding the Sheriff, that he cause the party to be viewed by twelve Knights, and searched by twelve Women, in the presence of the twelve Knights, & ad tractandum per ubera & ventrem inspiciend. whether she were with Child, and to certifie the same unto the Common Bench; and if she were with Child, to certifie for how long time in their Judgments, & quando sit paritura: Whereupon the Sheriff caused her to be searched, and returned, that she was twenty weeks gone with Child, and that within twenty weeks fuit paritura: whereupon another Writ issued out of the Common Bench, commanding the Sheriff safely to keep her in such an house, and that the doors should be well guarded, and that every day he should cause her to be viewed by some of the Women named in the Writ (wherein ten were named) and when she should be delivered, that some of them should be with her to view her Birth, whether it be Male or Female, to the intent there should not be any falsity; and upon this Writ the Sheriff returned, that accordingly he had caused her to be kept, &c. and that such a day, &c. she was delivered of a Daughter.

The Return thereunto.

The form of the Writ, ad eam salvo custodiend. quosque, &c.

She must be viewed by women.

The Return hereunto.

Theakers case, Cr. Jac. fo. 686.

The like writ de Ventre inspiciend. *but here the woman was married to a second Husband.*

So likewise the like Writ was afterwards directed to the Sheriffs of London, to cause one M. to be searched, whether she was with Child by her deceased Husband, & quando fuit paritura, (no mention being make of her second Marriage) and this Writ was according to the president in the 39 Eliz. of the like Writ against the said Lady Willoughby; and this Writ was returnable in the Common Bench: the Sheriff returned the Inquisition, that by such persons he caused her to be searched, and found her to be enseint, & quod fuit paritura within twenty weeks: wherefore he now prayed a second Writ out of this Court, to be directed to the Sheriff of Surrey, because she was removed with her Husband to W. in Surrey, and there inhabited, that the Sheriff might take her into his custody, and keep her until she was delivered of her Child, that there might not appear to be any false or suppositious Birth; and that in the interim he should cause her to be viewed every day by certain Matrons named by the Court in the writ, and that some of them should be at the Birth of the Child, accord-

The Sheriff's Return to it. Inquisition.

Court would not grant a writ, to remove her from her Husband.

ing to the said president of the Lady Willoughby: but because in that case the Lady was a Widow, and so such a course might well be observed; but here she is a Feme-Covert, who ought to habit with her Husband, they would not take such a course with her but left her with her Husband, he entring into a recognisance, that she should not remove from the house wherein they then inhabited, and that one or two of the women returned by the Sheriff, should see her every day, and that two or three of them should be present at her travail; for it was said, that this issue might well be said to be the Child of the first Husband, and should inherit his land, so as if there were any false or supposititious Birth, the Cosin and Heir might be disinherited: Wherefore a Writ was accordingly awarded to the Sheriff of Surrey, to cause her to be seen every day until her delivery, by two at least of the said women returned by him, and that three of them or more should be present with her at her delivery, so as no falshood might be in the Birth.

The Husband enters into a Recognisance, that she shall not remove from his house.

Another writ was awarded, to cause her to be viewed every day by Matrons.

Note, after this course observed, she was delivered of a Female Child, who was afterwards by inquisition, found to be the Daughter and Heir of the said William Theaker deceased.

SECT. 3.

The Sheriff directed what to do in returning Writs touching multitudes throwing down Fences and Ditches, &c.

The form of a writ devised by Noy *Attorney-General, against those which in multitudes threw down Hedges and Ditches, &c.*

Mich. 8 Car. in B. R. Cr. Car. 280, 281.

A Writ issued out of the Chancery, dat. 13 Martii 7 Car. to the Sheriff of Glouc. commanding him per Sacramentum proborum & legalium hominum de Com. prædict. to enquire Qui malefactores, & pacis Domini Regis perturbatores, apud Forestam de *Deane* sepes & fossata *Johannis Gibbons*, ibidem per ipsum nuper levat. noctanter, aut tali tempore quo factum eorum scire non credebant, prosternaverunt, to the dammage of the said *John*, & contra pacem: Et si prædictus *Johannes* fecerit te securum de clamore suo prosequendo, tunc pone per vadios & salvos plegios, omnes illos quos culpabiles ibidem inveneris, quod sint coram nobis in quindena Paschæ, ubicunque, &c. ad respondendum tam nobis de pace fracta, quam prædicto *Johanni* de transgressione, &c. The Sheriff ad quindena Paschæ returned the Inquisition; Quod virtute brevis prædict. ad inquirendum (reciting the writ) per Sacramentum 12, &c. qui dicunt super Sacramentum suum, quod quidam malefactores, & pacis Regis perturbatores, vi & armis sepes (viz.) 769. particarum sepium & fossarum ipsius *Johannis Gibbons*, apud Forestam de *Deane*, nuper ante per ipsum levat. prosternaverunt; sed qui; aliquam partem inde prostraverunt Juratores prædicti ignorant: Et similiter dicunt, quod vi armata & cum multitudinegentium, malefactores & pacis perturbatores prædicti fuerunt: Ita quod nullus ad ipsos appropinquare ad ipsos cognoscend. ausus fuit, & tali tempore quo factum eorum sciri non credebant, sepes & fossata prædicta prostraverunt & redierunt: And hereupon a writ of Distringas issued, reciting the first writ and the Inquisition thereupon returned, commanding the Sheriff of

The Return thereof by Inquisition.

Thereupon issued out a Distring. against propinquas villatas, to repair the Fences.

Gloucester, quod distringat propinquas villatas sepibus & fossatis prædictis circumadjacent. prædictas sepes & fossata prostrata levare ad custos suos proprios: And by the same Writ it was commanded, to enquire quæ damna prædictus *Johannes Gibbons* sustinuit, and to return the Writ and Inquisition in Octab. Trin. Hereupon the Sheriff certified, Quod villa de *Brettills*, & viginti aliæ villæ, (naming them) in the County of *Gloucester*, sunt propinqua villata sepibus & fossatis inframentionatis circumadjacentes, and further certified, quod damnum in quadam Inquisitione brevi annexat. eidem *Johanni Gibbons* propter brevitatem temporis restituere non potest; And returned Issues upon every of the said Villages, and that the residue of the Execution of the Writ appeared, in quadam Inquisitione eidem brevi annexat. and returned the Inquisition, whereby was found that the said *John Gibbons* sustinuit damnum occasione præmissorum ad 200 l. And upon this return Brampston Serjeant took divers Exceptions: First, for the Forrest of Deane, there is not any Parish named wherein it lyes; sed non allocatur, for a Forrest is certain enough of it self. Secondly, because this Writ is founded upon the Statute of Westm. 2. cap. 46. That if the Lord hath right to improve any of his Waste, *&c.* and his Hedges be destroyed *noctanter*, and it cannot be known by the verdict of the Assise or Jury, who those malefactors were, the Towns next adjoyning shall be distrained to levy the Hedge or Dyke at their own costs, and to yield dammages. And he doth not shew here, that he is Lord of the Waste, and hath right to improve it: But Noy the Kings Attorney, who devised this Writ, said, that it sufficeth in a Writ, to shew the grief breviter, and if there be not any such person as may inclose, it ought to be shewn on the other side. Thirdly, it was objected, that this Inclosure is not shewn to be with the Kings License, and then it is without Warrant: But hereto was answered, that it ought to come in by Plea after appearance, and not by way of exception: It was also moved by Noy, that they had no day in Court, because the Writ and the Inquisition were returned the last Term, and they then not appearing and pleading, they shall not be received to come in by way of exception in this manner: And he shewed a Record, Trin. 15. E. 1. Rot. 3. where such a Writ was awarded for one Nicholas de Stapleton, whose Hedges were cast down noctanter, and not being known by whom, had a Writ to distrain propinquas villas to repair, and he said that was the President for this case; and he prayed a new Distringas might be awarded; & habuit.

Retorn thereunto.

Issues returned upon every Village.

The Inquisition.

Several Exceptions taken to it.

The Writ is only to shew the grief breviter.

The King against the Inhabitants of Epworth, Mic. 11 Car. Rot. 146. Cr. Car. 440.

Afterwards (viz.) Mich. 11 Car. Rot. 146. upon the like occasion a Writ was granted in the case of the King, and the like Inquisition returned, and Exceptions taken to the Writ and Return: viz. First, That the Writ was not well granted; for it appears by the Writ and Inquisition, that the prostration began the first day of May, 10 Car. and continued till the first day of June, 11 Car. so that it was but a short time (viz. five days) before the Writ brought, which ought not to be, but there ought to be so long distance as the Countrey may have a convenient time to enquire, which ought to be a year; and so it was held in 12 Jac. Secondly, it doth not appear that this prostration was of any Fences, &c. of the Common which was improved. Thirdly, that the Writ doth not make any mention, that the Malefactors were not indicted. But Sir Jo. Banks the Kings

Inquisition retorned.

Exceptions taken to it.

1. Exception.

2. Exception.

3. Exception.

The Answer to the first.

Kings Attorney, answered to the first, That he had seen the resolution of 12 Jac. and it was not that there should be a year to indict the Offendors, but there ought to be a convenient time, and that the Court shall adjudge whether the time were convenient. To the second, that the Statute doth not only extend to the prostration of Inclosures to be improved out of the Common, but to all Inclosures; and it is for the benefit and peace of the Commonwealth, and shall be expounded most favourably for the King, and benefit of the Commonwealth: And if it extends only to the Improvement of Commons, it ought to have been pleaded, that this inclosure was not any parcel of the Common improved. To the third, that the Defendant should have pleaded, if any of the Offendors had been indicted: Et adjornatur. Vide the Statute of Westm. 2. cap. 46. upon which this Writ is grounded.

To the second.

To the third.

W. 2. cap. 46.

CAP.



CAP. V.

Retorns of Writs.

SECT. I.

Midds. ss.

Retorn of an Inquisition upon an Elegit.

INquisitio indentat. capt. apud V. in Com. prædict. 17 die *Junii* anno regni Domini *Caroli* secundi nunc Regis *Angliæ*, &c. 19. coram me *C. P.* Armig. Vic. Com. prædict. virtute brevis Domini Regis mihi direct. & huic Inquisitioni annexat. per Sacramentum *A. B. C. D.* &c. proborum & legalium hominum de Balliva mea, qui onerat. & jurat. existen. dicunt super Sacramentum suum, quod *W. R.* in dicto brevi hinc Inquisitioni annexat. nominat. die captionis hujus Inquisitionis possessionatus fuit, de bonis & catallis sequen. ut de bonis & catallis suis propriis, videlicet, de vigint. Vaccis, precii decem librarum, & de vigint. Ovibus, precii decem solidorum, quas ego præfat. Vic. prædict. *R. O.* liberari feci tenend. sibi bona & catalla prædict. ut bona & catalla sua propria, in parte satisfactionis debiti & dampnorum suorum prædict. in brevi prædict. mentionat. Et ulterius Jur. prædict. super Sacramentum suum prædict. similiter dicunt, quod prædict. *W. R.* tempore redditionis judicii prædicti, scilicet in prædict. Octab. Sancti *Hillar.* seisit. fuit in Dominico suo, ut de feodo, de & in uno capitali Messuagio, una domo portal. (Anglice a Gate-house) duobus horreis, & duobus stabulis, cum pertin. & tribus Gardinis, & tribus Pomariis, eidem capitali Messuagio adjungen. Ac etiam de & in quinquaginta acr. terræ arabilis & pasturæ, aut eo circiter, prox. prædict capitali Messuagio jacen. & ad inde pertinen. clari annui voloris in omnibus exitibus ultra repris. quatuordecim librarum & decem solidorum. Ac etiam de & in quinquaginta acr. prati, aut eo circiter, prædict. capitali Messuagio similiter pertinen. clari annui valoris in omnibus exitibus ultra repris. viginti & quinque librarum. Ac de & in viginti acr. bosci, aut eo circiter, prædict. capitali Messuagio pertinen. clari annui valoris in omnibus exitibus ultra repris. quinque librarum. Ac de & in octoginta acris terr. arabilis & pasturæ, aut eo circiter, predict. capitali Messuagio pertinen. clari annui valoris in omnibus exitibus ultra repris. quadraginta & quinque librarum, & decem solidorum; quæ quidem præmissa sunt scituat. jacen. & existen. in Parochia de *L.* in dicto Com. *M.* & modo sunt in tenura sive occupatione predict. *W. R.* sive Assign. suorum. Ac etiam de & in uno al. Messuagio, ac diversis aliis parcellis terr. arabilis, prati & pastur. eidem Messuagio pertinen. continen.

As well for Goods as Lands

per æstimationem sexaginta & tres acras, aut eo circiter, clari annui valoris in omnibus exitibus ultra repris. decem librarum, scituat. jacen. & existen. in Paroch. de *L.* predict. & modo in tenura sive occupatione predicti *W. R.* sive Assign. suorum. Ac etiam de & in uno alio Messuagio, & de diversis aliis parcellis terr. arabilis, prati & pasturæ, eidem Messuagio pertinen. continen. per æstimationem quadraginta acras, aut eo circiter, clari annui valoris in omnibus exitibus ultra repris. sex librarum, & scituat. jacen. & existen in Parochia de *L.* in Com. *M.* predict. modo in tenura sive occupatione *S. W.* Ac de & in uno alio Messuagio, & diversis aliis parcellis terr. arabilis, prati & pastur. eidem Messuagio pertinen. continen. per æstimationem quadraginta acras, aut eo circiter, clari annui valoris in omnibus exitibus ultra repris. sex solid. & octo denar. scituat. jacen. & existen. in Parochia de *L.* predict. & modo in tenura sive occupatione *J. B.* Ac de & in duabus aliis parcellis terr. arabilis & pastur. continen. per æstimationem novem acr. aut eo circiter, clari annui valoris in omnibus exitibus ultra repris. tresdecim solidorum & quatuor denar. scituat & jacen. in Paroch. de *L.* predict modo in tenura *P. T.* Ac etiam de & in tribus aliis parcellis terr. arabilis & bruer. continen. per æstimationem vigint. acr. aut eo circiter, clari annui valoris in omnibus exitibus ultra repris. quadraginta solidorum, scituat. jacen. & existen. in Parochia de *G.* in Com. *M.* predict. & modo in tenura sive occupatione *W. M.* Et Jur. predict. super Sacramentum suum predict. ulterius dicunt, quod predict. capitale Messuagium, predict. domus portal. (Anglice **a Gate-house**) predict. duo horrea, & predict. duo stabula cum pertin. predict. tria Gardina, & predict. tria Pomaria adinde pertinen. & predict. quinquagint. acr. terr. arabilis & pastur. aut eo circiter, prox. predict. capitali Messuagio jacen. & adinde pertinen. & predict. quinquagint. acr. prati, predict. capitali Messuagio similiter spectan. & predict. vigint. acr. bosci, una cum predict. Messuagio, & predict. diversis parcellis terr. arabilis, prati & pastur. continen. per æstimationem sexagint. & tres acras, aut eo circiter, sunt vera & equalis medietas omnium & singulorum terrarum, tenementorum & hereditamentorum quorumcunque in Com. *M.* predict. predicti *W. R.* in dicto brevi nominat. quam quidem medietat. ego predict. Vic. predict. die captionis hujus Inquisitionis, predicto *R. O.* Gen. in dicto brevi nominat. ad rationabile precium & extent. liberari feci, tenend. sibi & Assign. suis ut liberum tenementum suum, juxta formam Statuti inde edit. & provis. quousque resid. debiti & dampnorum predict. in brevi predict. specificat. inde levaverit, prout breve predict. in se exigit & requirit: Et ulterius Jur. predict. super Sacramentum suum predict. dicunt, quod predict. *W. R.* in brevi predicto nominat. tempore redditionis judicii predict. in dicto brevi specificat. non habuit, nec die captionis hujus Inquisitionis aliqua alia sive plura habet bona seu catalla, terras seu tenementa in Com. predict. ad notitiam Jur. predict. In cujus rei testimonium, tam ego prefat. Vic. quam Jur. predict. huic Inquisitioni sigilla nostra alternatim apposuimus, die, anno & loco supradictis.

C. P. Ar. Vic.

The words of the Writ must be pursued.

Note, that in all Returns of this or any other nature, the words of the Writ ought to be pursued.

The Sheriff must deliver just a moiety.

Note also, the Sheriff must be sure, after the Jury have found the parcels and apprized them, to deliver to the Plaintiff just a moiety, according to the apprizement of the Jury, and no more, for if he Returns more or less, the Retorn is void.

Inquisitio

Midd. ss. Inquisitio indentat. capt. pud *S.* in Com prædict. (tali die et anno) coram me *R. E.* Barr. vic. Com. prædict. virtute brevis Domini Regis mihi direct. et huic inquisitioni annex. *A. R. M. B.* et cæter. terr. tenent. tenement. in brevi prædict. mentionat. cum pertin. per me inde præmunit. existen. si interesse voluerint per sacramentum *F. B.* Gen. (et cæter. jur.) qui jurat. et onerat. existen. dicunt super sacramentum suum, quod unum molendinum aquaticum cum pertin. communiter vocat. *Home Milne*, et sex acr' prati et pasturæ eidem molendino aquatico vocat. *Home Milne* spectan. sive pertinen. scituat. jacen. & existen. in Paroch. de *W.* et *G.* in Com. prædict. seu in earum una et in brevi predict. mentionat. ac modo vel nuper in tenura sive occupatione cujusdam *J. C.* vel assignatorum suorum in eodem brevi nominat. sunt clari annui valoris in omnibus exitibus ultra repris. decem librarum, *&c.* (**and so set out all the particulars.**) Quam quidem medietatem scilicet prædict. molendinum aquaticum vocat. *Holme Milne* et cætera præmissa prædict. in ista inquisitione præmentionat. cum pertin. ego præfat. vic. postea scilicet (tali die) (prædict. *A. R. M. B. &c.* terr-tenen. prædict. per me inde præmunit. existen. si interesse voluerint) liberari feci *E. B.* vid. in eodem brevi similiter nominat. (per *T. S.* Gen. ejus in hac parte certum Attorn. sive Assign. legitime constitut.) tenend. medietatem prædict. cum pertin. sibi præfat. *E. B.* & Assign. suis ut liberum tenementum suum quousq; trescent. libr. bonæ et legalis monetæ Angliæ plenar. fuerint inde levat. juxta exigentiam ejusdem brevis ac prout per idem breve mihi præcipitur. In cujus rei testimonium, *&c.*

Inquisitio super breve de Elegit. extra Canc. super ercogn.

Le Moiety *sit oit.*

Terr-Tenentes preminuit.

Deliberat. per Vic. Attorn. quær. loco quær.

E. R. Bar. Vic.

Executio istius brevis patet in quadam inquisitione huic brevi annex.

R. E. Bar Vic.

The form of a Retorn by the New Sheriff, when the writ was executed by the Old Sheriff.

Istud breve sic indorf. mihi deliberat. fuit per præfat. R. E. Barr. nuper Vic. Com. mei *M.* in ejus exit. ab officio suo.

R. H. Ar. modo Vic.

Midd. ss. Inquisitio indentat. capta apud *M.* in Com. predict. (tali die et anno) coram me *W. W.* Baronett. Vic. Com. predict. virtute brevis Domini Regis de diem clausit extremum mihi direct. et huic inquisitioni annex. per sacramentum *I. P. &c.* proborum et legalium hominum de balliva mea, qui onerat. et jurat. existen. dicunt super sacrum suum, quod *J. B.* in prædict. brevi nominatus, obiit apud *H.* in Com. prædict. circa tres menses jam ult. elapf. ante diem captionis hujus Inquisitionis, et tempore mortis suæ seisitus fuit in dominico suo ut de fœdo, de et in uno messuagio cum area et pomar. eidem spectan. et pertinen. cum suis pertin. scituat. jacen. et existen. in Parochia de *H.* in Com. predict. modo vel nuper in tenura sive occupatione cujusdam *T. C.* vel assignat. suorum clari annui valoris in omnibus exit. ultra repris. viginti solid. ac etiam jur. predict. super sacramentum suum prædict. similiter dicunt quod prædict. *J. B.* possessionatus fuit ut de bonis et catallis suis propriis, de et in una dimissione, pro termino tresdecim annorum tunc ventur. et inexpirat. sibi prefat. Johanni in vita sua, per quendam *P.* Gen. per Indenturam fact. et sigillat. de et in uno messuagio, cum areis, gardinis, et pomariis, eidem spectan. et pertinen. scituat. et existen. in parochia de *H.* prædict. nuper in occupatione præfat. *J. B.* vel assignatorum suorum.

Inquisitio super breve de diem clausit extremum.

Obiit seisit.

Possession of a Lease for years found.

rum, & modo in occupatione E. B. viduæ nuper uxoris ejus vel assignatorum suorum, ac una parcella sive clauso terr. cum pertin. jacen. & existen. in predict. Parochia de *H.* predict. continen. per estimationem tres acras, sive plus sive minus, dicto Messuagio ult. recitat. spectan. sive pertinen. modo vel nuper in occupatione præfat. *E. B.* vid. vel assignatorum suorum, quæ quidem dimissio, dict. Messuag. & præmiss. ult. recitat. ac termin. stat. & interesse, de quibus idem *J. B.* predict. tempore mortis suæ sic ut præfertur possessionatus fuit, valent. ad vendend. decem libras legalis monetæ Angliæ ultra omnes reddit. & repris. & ulterius Jur. predict. similiter dicunt super Sacramentum suum predict. quod predict. *J. B.* tempore mortis suæ, possessionat. fuit ut de bonis catallis & utensiliis, (Anglice Houshold-stuff) cum pertin. particularit. mentionat. & expres. in Inventorio sive Schedula indentat. & dicto brevi huic Inquisitioni annex. ac per Jur. predict. appreciat. ad separal. summas, & valor. in eodem Inventorio sive Schedula similiter specificat. & quæ in toto attingunt, ad summam viginti & quatuor librarum, quæ quidem bona catalla & utensilia, sunt jacen. & existen. in & circa predict. Messuag. & areas in *H.* predict. in occupatione presfat. *E. B.* & insuper Jur. predict. super Sacramentum suum predict. similiter dicunt, quod quidem *T.* de *H.* predict. Grocer & *S. S.* de *M.* in dicto Com. *Midd.* Clericus, perscriptum suum obligatorium, geren. dat. ante diem mortis predict. *J. B.* devener. obligat. prefato *J. B.* in vita sua, in summa viginti & quatuor librarum, legalis monet. Angl. solvend. presfat. *J. B.* ad certum diem jam preterit. ac Jur. predict. super Sacramentum suum predict. similiter dicunt, quod predict. bona, catalla, utensilia, ac Indentura, & Scriptum obligatorium præmentionat. post mortem predict. *J. B.* ad manus & possessionem, præfat. *E. B.* uxoris ejus, & Executricis, devenerunt & in manibus suis jam existunt, quæ omnia & singul. Messuag. dimissionem, bona, catalla, utensilia, & cætera præmissa præmentionat. cum pertin. una cum predict. Indentur. & script. obligator. ac predict. debit: viginti ac quatuor librarum, in eodem scripto obligat. mentionat. ego præfat. Vic. dicto die captionis, hujus Inquisitionis, in manus dicti Domini Regis, capi & seisiri feci, juxta exigent. brevis predict. ac prout per idem breve mihi præcipit: idemque Jur. predict. similiter dicunt, super Sacramentum suum predict. quod predict. *J. B.* (tali die & anno) in brevi predict. mentionat. quo die debitor. dicto Domino Regi devenit, seu unquam postea, nulla alia, sive plur. habuit, terr. tenementa sive hereditamenta, in dicta Balliva mea, neque die quo obiit, habuit aut possessionat. fuit, de aliquibus aliis, sive plur. bonis, catallis, debit. credit. seu specialitat. in Balliva mea, ad notiç. Jur. predict. seu eorum alicujus, quæ extend. aut appreciari possunt, In cujus rei, &c.

The value thereof.

Possession of household-goods found, and annexed in a Schedule.

An Obligation found.

Ad manus Executricis deven.

In manus Domini Regis capi, & seisiri feci.

Nulla alia, terr. tenementa, bona, seu catalla, &c.

W. W. Barr. Vic.

Midd. ss.

Inquisitio super breve de extend. fac. pro domino Rege in auxilium D. H. vers. J. W. Ar. Debitor. Domino Regi devenit.

Inquisitio indentat. capt. apud *S.* in Com. predict. (tali die & anno) coram me *M. L.* Armig. Vic. Com. predict. virtute brevis dicti Domini Regis mihi direct. et huic Inquisitioni annex. per Sacramentum *W. C.* &c. proborum et legalium hominum de Com. meo predicto, qui jurat. et onerat. existen. dicunt super Sacramentum suum, quod *I. W.* Ar. in brevi predict. nominat. (tali die) quo die debitor. dicto Domino Regi primo devenit, seisitus fuit, et die captionis hujus Inquisitionis seisitus existit in Dominico suo, ut de feodo taliat. in reversione cum acciderit, scilicet post mortem *A.* Dominæ *W* viduæ.

viduæ, matris ejus, de & in reversione tertiæ partis indivis. Manerij vocat. *B.* scituat. & existen. in Parochia de *M.* in dicto Com. *Midd.* in tres partes dividend. cum omnibus & singulis juribus, membris, reddit. servitiis & pertinen. quibuscunque, eidem Manerio spectan. sive pertinen. modo vel nuper in tenura sive occupatione prefat *A.* Dominæ *W.* vel assign. suorum; Ac etiam in reversione cum accid. scilicet post mortem prefat. *A.* Dominæ *W.* vid. de & in tertia parte indivis. (in tres partes similiter dividend.) omnium & singulorum terr. tenementorum & hæreditamentorum eidem Maner. spectan. sive pertinen. cum pertin. aut cum eodem; modo vel nuper usitat. sive occupat. ut pars, parcell. sive membr. ejusdem, jacen. & existen. in Paroch. de *M.* predict. modo vel nuper in tenura sive occupatione prefat. *A.* Dominæ *W.* vid. vel assign. suorum, clari annui valor. in omnibus exitibus ultra repris. cent. librarum; (**and so of the rest of the parcels.**) Quæ omnia & singula præmissa predict. præmentionat. cum pertin. unde predict. *I. W.* in reversione predict. sicut præfertur seisit. existit, ego prefat. Vic. dicto die captionis hujus Inquisitionis in manus dicti Domini Regis cepi & seisiri feci; prout per breve predict. mihi præcipitur: Ac ulterius Jur. predict. super Sacramentum suum predict. similiter dicunt, quod predict. *A.* Domina *W.* modo superstes, et in plena vita existit; Ac quod prefat. *I. W.* (tali die) seu unquam postea hucusque, nulla alia sive plura habuit, seu modo habet, Maneria, terr. tenementa seu hæreditamenta, nec dicto die captionis hujus Inquisitionis aliqua habet bona seu catalla in dicta Balliva mea, ad notic. Jur. predict. seu eorum alicujus, quæ modo extend. appreciari, aut in manus dicti Domini Regis seisiri possunt. In cujus rei, *&c.*

Seisin. de reversione in feodo talliato, invent. in Manerio dividend. in partibus.

In manus Domini Regis cepit & seisivit.

Quod tenens pro termino vitæ, modo superstes, & in plena vita. &c.

Nulla alia, sive plura, &c.

Inquisitio, *&c.* coram me *M. L.* Ar. Vic. Com. predict. virtute brevis Domini Regis de melius inquirend. mihi direct. et huic Inquisitioni annexat. per Sacramentum *A. B.* (et cæterum Juratorum) proborum et legalium hominum de Balliva mea, qui jurat. et onerat. ad inquirend. qualiter et quomodo *F. H.* nuper de *P.* in Com. pred. Yeoman, ad mortem suam devenit, dicunt super Sacramentum suum, quod predict. *F. H.* in brevi predict. nominat. apud *P.* predict. in Com. predict. ex visitatione divina obiit; (**or otherwise as the case shall be;**) Et sic Jur. predict. dicunt, quod predict. *F. H.* modo et forma predict. et non aliter, nec aliquo alio modo ad mortem suam devenit. In cujus rei, *&c.* tam ego prefat. Vic. quam Jur. *&c.*

Inquisitio sur melius inquirend. quomodo & qualiter A B. ad mortem devenit.

Ex visitatione divina obiit, &c.

Midds. ss. Inquisitio indentat. capta apud *R.* in Com. predict. (tali die) coram me *M. L.* Barr. Vic. Com. predict. virtute brevis dicti Domini Regis de re-extend. fac. super Statut. Stapul. mihi direct. et huic Inquisitioni annexat. per Sacramentum *T. T.* (**insert the Jurors names**) proborum et legalium hominum de Balliva mea, qui jurat. et onerat. dicunt super Sacramentum suum, quod *R. G.* nuper de *L.* in Com. *S.* Armig. modo defunct. in brevi predicto nominatus citra (talem diem) in dicto brevi mentionat. (quo die debit. mille librarum in eodem brevi specificat. per ipsum recognit. fuit) seisitus fuit in Dominico suo ut de feodo, de et in tota illa pecia & parcella Marisci et terr. Mariscal. cum pertin. continen. per æstimationem decem acras, *&c.* jacen. et existen. in Paroch. de *A.* in dicto Com. *M.* abbuttan. sive prope adjacen. cuidam loco ibidem vocat. *C. O.* ex parte orien. *&c.* ante hac in separalibus tenuris sive occupationibus, quorundam *T. D.* et *I. H.* aut eorum unius, vel assign. eorum, aut unius

Inquisitio super breve de re-extend fac. super Stat. Stapul. pro Execut. &c.

Seisin in fee.

unius eorum: Quæ omnia & singula catalla, peciæ & parcellæ Marisci & terr. Mariscal. & cætera præmissa præmentionat. cum pertin. de quibus prædict. R. G. sic ut præfertur seisitus fuit, in dominico suo ut de feodo, ego præfat. Vic. dicto die captionis hujus Inquisitionis, diligenter extendi & appreciari, & in manus dicti Domini Regis nunc seisiri feci, ut idem Dominus Rex, ea *Edwardo* Comiti *S.* Executori testamenti & ultimæ voluntatis *S. M.* Militis, in brevi prædict. similiter nominat. quousque sibi de prædict. debito mille librarum plene satisfact. fuit, liberari fac. juxta formam Statuti apud *Westm.* pro hujusmodi debit. recuperand. inde edit. & provis. secundum tenorem & effectum ejusdem brevis, ac prout per idem breve mihi præcipitur: Ac. ulterius Jur. prædict. super Sacramentum suum prædictum similiter dicunt, quod nulli sunt sive existit, heredes sive hæredem, qui infra ætatem existunt sive existit, quibus vel cui præmissa prementionat. cum pertin. de quibus prædictus *R. G.* sic ut præfertur seisitus fuit, in Dominico suo ut de feodo, aut aliqua inde parcella, jure hæreditario discenderunt sive discendit, ad notitiam eorum, aut alicujus eorum: Denique Jur. prædict. super Sacramentum suum prædictum similiter dicunt, quod nulla sunt bona seu catalla in Balliva mea, quæ fuerunt præfat. *R. G.* die obitus sui; neque sunt aliqua alia sive plura terr. tenementa seu hæreditamenta, in dicto Com. *M.* de quibus idem *R. G.* prædict. (die, &c.) seu unquam postea seisitus fuit, in Dominico suo ut de feodo, quæ extendi, appreciari, aut in manus dicti Domini Regis nunc capi aut seisiri possunt, ad notitiam Jur. prædict. seu eorum alicujus. In cujus rei testimonium, tam ego præfat. Vic. quam Jur. prædict. sigilla nostra huic Inquisitioni apposuimus, die & anno primo supradict.

Seisivit in manus Domini Regis.

Nullus hæres infra ætatem.

Nulla bona.

Midd. ss. Inquisitio indentat. capta apud *W.* in Com. predict. (tali die) coram me *A. B.* Mil. & Barr. Vic. Com. prædict. virtute brevis dicti Domini Regis de Statut. Stapul. mihi direct. & huic Inquisitioni annexat. per Sacramentnm *I. S.* (insert the Jurors) proborum & legalium hominum de Balliva mea, qui jurat. & onerat. existen. dicunt super Sacramennum suum, quod *W. G.* de. *A.* in Com. prædict. Armig. in brevi prædicto nominatus, dicto die captionis hujus Inquisitionis possessionatus fuit & existit de bonis & catallis suis propriis, de & in omnibus & singulis bonis & catallis in Schedula sive Inventorio indentat. huic Inquisitioni annexat. particulariter mentionat. & expressis, separalium preciarum & valorum in eadem Schedula sive Inventorio particulariter specificat. attingen. in toto ad sexaginta & tres libras, legalis monetæ *Angliæ*: Ac etiam Jur. prædict. super Sacramentum suum similiter dicunt, quod prædict. *W. G.* & *M.* uxor ejus, nuper dicta *M. G.* citra tempus recognitionis debit. octingentarum librarum in eodem brevi mentionat. scilicet citra (diem, &c.) in dicto brevi specificat. seisit. fuer. & dicto die captionis hujus Inquisitionis seisit. est, (in jure ipsius *Mariæ*) in Dominico suo ut de feodo, de & in medietate omnium & singulorum Messuagiorum, tenementorum & hæreditamentorum quorumcunque, cum pertin. postea particulariter mentionat. & express. existen. in toto clari annui valoris in omnibus exitibus ultra repris. 70 l. legalis monetæ *Angliæ*: Ac de & in medietate duorum Clauf. (name the particulars here:) Omnia quæ quidem Messuagia, terras, tenementa & hæreditamenta præmentionat. cum pertin. prædict. *W. G.* & *Maria* uxor ejus, ut in jure ipsius *Mariæ*, & *I. H.* Gen. & *Francisca* uxor ejus, ut in jure ipsius *F.* insimul pro indiviso tenent. ac de eisdem modo seisiti existunt, in Dominico

Inquisitio super Stat. staple.

Possession of Goods in a Schedule annexed.

seisit jure uxoris.

Quod tenent insimul & pro indiviso.

minico suo ut de feodo: Ac ulterius Jur. predict. super Sacramentum suum predict. similiter dicunt, quod predict. *M.* uxor predict. *W. G.* adhuc superstes & in plena vita existit, scilicet apud *W.* predict. in Com. predict. Ac insuper Jur. predict. super Sacramentum suum predict. similiter dicunt, quod predict. *W. G.* citra tempus recognitionis debiti predicti, in dicto brevi specificat. scilicet citra predict. (diem, &c.) seisitus fuit, & dicto die captionis hujus Inquisitionis seisit. existit, in Dominico suo ut de feodo, de & in uno capitali Messuagio, *&c.* Quæ quidem bona & catalla in Schedula sive Inventorio predict. mentionat. necnon omnia & singula Messuagia, terra, tenementa & premissa prementionat. cum pertin. scilicet tam medietatem omnium & singulorum Messuagiorum, Cottagiorum, terrarum, tenementorum & hæreditamentorum, cum pertin. de quibus predict. *W. G.* & *M.* uxor ejus, sic ut præfertur seisiti fuerunt & existunt, in Dominico suo ut de feodo, in jure ipsius *M.* Quam predict. capitale Messuagium, *&c.* ego præfat. Vic. in manus dicti Domini Regis seisiri feci, juxta exigentiam brevis predict. ac prout per idem breve mihi præcipitur. Ac denique Jur. predict. super Sacramentum suum predictum similiter dicunt, quod predictus *W. G.* die test. brevis predict. scilicet (tali die, *&c.*) anno supradicto, seu unquam postea hucusque possessionatus fuit sive existit, de null. aliis sive pluribus bonis seu catallis in Balliva mea, neque fuit sive existit, idem *W. G.* in jure suo proprio, aut in jure præfat. *M.* uxoris ejus, seisitus de aliquibus aliis sive pluribus terris, tenementis seu hæreditamentis in dicto Com. *M.* predicto tempore recognitionis debiti predicti, scilicet dicto (die, *&c.*) anno supradicto, seu unquam postea hucusque, quæ extendi, appreciari, aut in manus dicti Domini Regis seisiri possunt, ad notiam Jur. predictorum, seu eorum alicujus. In cujus rei testimonium, tam ego præfat. Vic. quam Jur. predict. sigilla nostra huic Inquisitioni apposuimus, die & anno primo supradictis.

Adhuc superstes, & in plena vita.

Delivery by the Sheriff, as well Goods as Lands.

Nulla alia bona, terr. &c.

Qui dicunt super Sacramentum suum quod *A.* in brevi predict. nominat. predict. die captionis hujus Inquisitionis possessionatus fuit, de bonis & catallis hic postea mentionat. ut de bonis & catallis suis propriis, videlicet de uno equo præcij 40 s. tribus vaccis cum tribus vitulis, præcij cujuslibet vaccæ cum vitulo suo 30 s. una mensa, tribus cathedris, tribus sellis vinctis, (and so name all the goods in particular) ad valenc. 10 l. & Jur. predict. super Sacramentum suum predict. ulterius dicunt, quod predict. *A.* die redditionis judicij in brevi predict. mentionat. scilicet die, *&c.* seisit. fuit & modo seisit. existit in Dominico suo ut de feodo, vel in Dominico suo ut de libero tenemento in Jure *B.* uxor. ejus, (quæ modo superstes & in plena vita exstitit) (as the case is) de & in uno Messuagio & quibusdam parcellis terræ, prati, & pasturæ, cum pertin. continen. per æstimationem centum acras, vocat. vel cognit. per nomen de Hamons Farm, scituat. jacen. & existen. in *D.* in Com. predict. modo vel nuper in tenura vel occupatione *F.* vel assignorum suorum, clari annui valoris in omnibus exitibus ultra repris. 20 l. ac de & in, (and so find all the Lands) omnia quæ quidem bona & catalla supradicta, necnon medietat. terrarum & tenement. predict. per Inquisitionem predict. in forma predict. compert. videlicet predict. Messuagium, *&c.* (and so assign a Moiety) ego præfat. vic. predict. die captionis hujus Inquisitionis, virtute brevis predict. præfat. *R.* in eodem brevi mentionat. per rationabile precium & extent. predict. liberari feci tenend. bona & catalla predict. ut bona & catalla sua propria, ac etiam tenend. medietat. predict. ut liberum tenementum

Another Retorn of an Elegit, executed de bonis & catal. & de terris.

A Moiety set out.

mentum suum sibi & assign. suis, juxta formam statuti in eodem brevi mentionat. quousque debitum & dampna in eodem brevi spec. plenar. inde levaverit, prout breve illud in se exigit & requirit: & ulterius Jur. predict. dicunt super Sacrament. suum predict. quod predict. *A.* non habuit (tali die) in brevi predict. spec. (quo die breve illud emanavit) nec unquam postea aliqua alia sive plura bona seu catalla in balliva mea, nec habuerint predict. die redditionis Judicij predict. seu unquam postea aliqua alia sive plur. terras, seu tenementa, in balliva mea, quæ extendi & appreciari possunt ad notic. Jur. predictorum. In cujus rei testimonium, *&c.*

Lands and Fee-farm Rent extended on an Elegit, and the Rents only delivered for a Moiety.

Qui dicunt super Sacramentum suum, quod *A.* in brevi predict. nominat. die redditionis Judicij in eodem brevi mentionat. scilicet die, *&c.* seisit. fuit in Dominico suo ut de feodo, de & in Manerio de *D.* cum pertin. in Com. predict. ac de & in uno capital. messuagio, cum pertin. *&c.* (**and so go over all the Lands in common form**) ac de & in toto illo annuali reddit. sive feodo firma, triginta & quinque librarum legalis monetæ Angliæ exeun. sive reservat. de vel ex Manerio de *D.* in Com. predict.

Retorn. breve de inquir. super Stat. Westm. 2. c. 46. de eis qui noctant. sepes prostraver, *&c.* *This writ being at the suit of a private person, it must be indorsed.* Pleg. de pros. J. Doo. & Rich. Roo.

Inquisitio Indentat. capt. *&c.* virtute brevis dicti Domini Regis ad inquirend. qui malefactores & pacis Domini Regis perturbatores apud *R.* in Com. predict. vi & armis sepes & fossat. *Henr. W.* ibid. per ipsum nuper levat. noctanter aut (tali tempore) quo facta eorum scire non credebant postraver. ad grave dampnum ipsius *Henr. W.* eidem vic. direct. & huic Inquisitioni annex. per Sacramentum, *&c.* proborum, *&c.* Qui dicunt super Sacramentum suum, quod quidam malefactores & pacis dicti Domini Regis perturbatores, 21 die Augusti, Anno, *&c.* apud *&c.* vi & armis, septuagint. perticat. sep. & fossat. predict. *Henrici* ibid. nuper ante tunc per ipsum levat. noctanter aut tali tempore quo facta eorum scire non credebant prostrassent, contra pacem dicti Domini Regis, sed qui vel quis sepes & fossat. predict. prostrasset vel prostrassent, Jur. predict. penitus ignorant. In cujus rei testimonium, *&c.* **See for this in Chap. Retorn in this Supplement.**

Retorn. breve de distr. propinquas villat. sepibus præd. circumadjacen.

Indorse on the back of the Writ, Manucap. separalium inhabitan. de *E. F. G.* (**naming every Vill**) existen. propinque villat. sepibus & fossat. infrascript. circumadjacen. *Johannes Doo*, & *Richardus Roo.*

Exit. inhabitan. de E.——5 l.
Exit. inhabitan. de *F.*——5 l. & sic de cæteris vill.

Tarde Retorn.

Et ulterius Domino Regi infrascript. certifico, quod istud breve adeo tarde mihi deliberat. fuit, quod propter brevitat. temporis dampna in Inquisitione huic brevi annex. mentionat. eidem Domino Regi restituere non possum, resid. executionis istius brevis, patet in Inquisitione predict. huic brevi annex.

Inquisitio, *&c.* Qui dicunt super Sacramentum suum, quod *Henr. W.* in brevi huic Inquisitioni annex. nominat. sustinuit dampna occasione in eodem brevi specificat. ad 80 l. In cujus rei, *&c.*

Note, If the Sheriff omit any of the Vills that are circumadjacent out of his Retorn, the rest have an action against him for so doing.

Ego

Ego *A. B.* Mil. Vic. Com. predict. Justic. Domini Regis de Banco, ad diem & locum in brevi huic Schedulæ annex. mentionat. certifico, quod virtute istius brevis mihi direct. ego presat. Vic. feci quoddam warrantum meum sigillo officii mei Vic. sigillat. quibusdam *R. D.* & *S.* Ballivis meis, conjunctim & divisim direct. ad capiend. & arrestand. *W.* in eodem brevi nominat. ad respond. *I. F.* in eodem brevi nominat. de placito debiti 200 l. secundum exigent' istius brevis; qui quidem *R.* & *D.* postea, & ante retorn. brevis predict. scilicet 11 Jan. &c. presat. *W.* apud *Pagham* in Com. predict. virtute warrant. predict. ceperunt & arrestaverunt, & eum usque Gaolam Domini Regis apud *H.* in eodem Com. ductur. fuit; atque ea de causa predict. *R.* & *D.* 12 die Jan. &c. ipsum *W.* à *Pagham* predict. usque *Palborough* in eodem Com. erga Gaolam predict. duxissent, super quo predict. *W.* & quidam *A.* & *B.* predict. 12 die Jan. &c. anno, &c. vi & armis, &c. in presat. Ballivos meos apud *Palborough* predict. insult. fecer. & predict. *A.* & *B.* predict. *W.* (sic arrestat. & in itinere suo erga Gaolam predict. existen.) extra custodiam meam, contra voluntat. eorundem Ballivorum meorum, ad tunc & ibidem rescusserunt, & eundem *W.* ad largum ire procuraverunt. Et predict. *W.* seipsum ad tunc & ibidem (similiter) rescussit & escapiavit: Et postea, & ante retorn. brevis predict. presat. *W.* non est invent. in Balliva mea. (Vide **Chapter** Rescous in **this Supplement.**)

Rescous retorn.

Capt. apud Pagham, *and carrid to P. toward the Goal. and there rescued.*

Certifico, quod infranominat. *I. D.* non detent. existit in prisona sub custod. mea nec fuit die receptionis istius brevis, seu unquam postea, nec aliqua causa detentionis ipsius *I.* mecum residet. Et ideo corpus ejus coram, &c. habere non possum.

Al. Hab. Cor. nul tiel prisonar.

Nos *R. R.* Mil. & *R. F.* Mil. Vic. Civitat. *London.* & *E. M.* Coronator. ejusdem Civitatis, Serenissimo Domini Regi in Canc. sua humillime certificamus, quod virtute brevis Domini Regis huic Schedulæ annex. nobis direct. cepimus bonam & sufficient. securitat. pro *Johanne Turnor,* in dicto brevi nominat. (videlicet) sex manucaptores sufficient. qui susceperunt super se pro predict. *Johanne.* quod idem *Johannes* seipsum bene gereret, tam erga dict. Dominum Regem nunc hæred. & successores suos, quam erga cunctum populum dicti Domini Regis, secundum formam Statut. in brevi predict. mentionat. Cujus securitatis forma in altera Schedula huic brevi annex. plenius liquet & apparet. In cujus rei testimonium, tam presat. Vic. quam Coronator. predict. his presentibus sigilla sua apponi fecerint, 22 die April. Anno regni dicti Domini Regis nunc 16.

Certificate by Sheriff and Coroners that J. T. *hath given security for his good behaviour before the allowance of his pardon.*

Vide *the Stat.* 10 E. 3. *whereupon this writ is made.*

In another Schedule annex the security it self.

Et ulterius predict. Advocatio Ecclesiæ de *T.* predict. allocatur & assignatur, per me presat. Vic predict *Tho. W.* & *D.* uxori ejus, *A. N.* & *Elizabethæ* uxori ejus, *H. S.* & *C.* uxori ejus, *T. H.* & *E.* uxori ejus, & *G. C.* & hæredibus apparent. *Dorotheæ, E. E. Cordeliæ* & *Graciæ,* per turnos modo & forma sequen. videlicet, quod predict. *T. W.* & *D.* uxor ejus, in jure ipsius *D.* & hæred. et assign. ipsius *D.* Clericum suum ad eandem Ecclesiam cum primo et prox. vacare contingct, ut in turno suo presentabunt: Et predict. *A. N.* et *Elizabetha* uxor ejus in jure ipsius *Elizabethæ,* et hæred. et assign. ipsius *Elizabethæ,* ad Ecclesiam predict. cum per mortem, cessionem, privationem vel resignationem Clerici, qui ad presentationem predict. *T. W.*

Brevi de partitione de Advocatione ad præsentand. per turnos.

T. W. & *Dorothea* uxoris ejus, vel hæred. vel assign. ipsius *Dorothea*, ad eandem Ecclesiam fuerit admissus & institutus, seu quocunque alio modo tunc prox. vacare contingat Clericum suum ut in turno suo proprio presentabunt: Et predict. *H. S.* & *Cordelia* uxor ejus, in jure ipsius *C.* & hæred. & assign. ipsius *C.* Clericum suum ad eandem Ecclesiam, cum per mortem, cessionem, &c. (*ut supra*, **of the last before**, *& sic de cæteris, &c*,) Et sic alternatim & successive predict. *T. W.* & *D.* hæred. & assign. ipsius. *D.* ut in turno suo, ac predict. *A. N.* & *E.* uxor ejus, hæred. & assign. ipsius *E.* ut in turno suo, ac predict. *H. S.* & *C.* hæred. & assign. ipsius *C.* uxoris ejus, ut in turno suo, ac predict. *T. H* & *E.* uxor ejus, hæred. & assign. ipsius *E.* ut in turno suo & predict. *Gracia*, hæred. & assign. sui, ut in turno suo, presentabunt Clericos suos respective ad Ecclesiam predict. absque contradictione sive impedimento alicujus eorum ad alium imperpetuum.

The Sheriff upon a Fi. fac. may sell corn growing.

Nota, the Sheriff upon a Fi. fa. **may seize and sell corn growing upon the Defendants land, and the party to whom this sale is made, shall have liberty of cutting and carrying of it away, by virtue of such sale made by the Sheriff or other Officer in the execution of his writ.**

But it is a Quære *whether he may sell grass.*

But it is a Quære **whether the Sheriff may seize and sell grass growing, because grass grows naturally out of the Land without any Tillage.**

Al. acced. ad Cur. Vic. ret. quod seign. non vult tenere Cur.

Virtute, &c. accessi ad *R.* infrascript. & ibidem rogavi infranominat. *W. S.* cum magna instanc. tenere Cur. suam infrascript. ut executio istius brevis mihi direct. ibidem secundum formam ejusdem per me fier. possit. Et idem *W.* Cur. suam ibidem, à tempore receptionis istius brevis, usque diem retorn. inde, tenere minime curavit, & omnino recusavit. Et ideo execut. istius brevis facere non possum.

Al. acced. ad Cur. ret. quod le suitors noluer. liberare record.

Virtute, &c. assumptis mecum *D. F.* &c. quatuor discret. & legal. Mil. de Balliva mea accessi ad Cur. infranominat. *I. B*, tent. apud *O.* (tali die, &c.) ad recordand. in Cur. illa loquelam infrascript. ad tunc & ibidem requirend. *B. C.* &c. sectatores Cur. predict. tunc ibidem existen. ad deliberand. mihi recordum loquele predict. ut recordum illud haberem coram Justic. &c. predict. qui sectatores recordum prædict. mihi liberare noluer. ob quod recordum illud coram Justic. &c. habere non possum.

Al. brief de homine repleg. ret. quod il. est esloigne.

Domino Regi certifico, quod executio istius brevis juxta formam & effectum inde facere non possum, eo quod ante adventum istius brevis mihi direct. *W. S.*. infranominat. per infrascript. *C. D.* & alios ad loca mihi incogn. elongat. fuit, & adhuc elongat. existit, ita quod ipsum *W.* videre ac visum seu notitiam de eo aliqualiter habere minime possum. Et ulterius certifico, quod nullum aliud breve ad replegiand. prædict. *W.* præterquam istud breve ad manus meas unquam devenit.

Al. repleg. a-veria nullus ven. a monstre l'avers.

Quoad Repledg. faciend. infranominat. *J.* catalla infrascript. nullus ex parte ejusdem *J.* venit ad ostendend. mihi quæ, quot, & qualia catalla ipsius *J.* infranominat. *T.* & alii ceperunt & injuste detinuer. Ideo catalla illa prefat. *J.* minime repleg. possum.

Istud

Istud breve & duo alia brevia simul & semel mihi deliberat. fuer. (tali die, &c.) & non antea, & virtute istius brevis accessi ad *B.* in Com. meo, ubi averia infrascript. fuer. ad illa, infranominat. *A.* replegiand. & infranominat. *E. B.* miles in Jure suo proprio, & infranominat. *W.* ut ballivus ipsius *E.* clam. proprietat. averiorum prædict. fore averia propria prædict. *E.* & ideo averia illa præfat. *A.* repleg. non potui, juxta exigent. hujus brevis. *A Retorn of property claimed.*

Pro executione istius brevis faciend. mandavi Ballivo libertat. Domini Regis de *S.* parcell. ducat. sui Lancastr. qui habet plenum retornum omnium brevium & executionem eorundem infra libertat. prædict. & cui execut. istius brevis totalit. pertinuit faciend. eo quod execut. ejusdem brevis extra libertat. prædict. per me Vic. Com. prædict. fieri non potest, qui quidem Ballivus videlicet *R. D.* mihi sic respond. quod virtute cujusdam præcepti per me præfat. Vic. eidem Ballivo direct. fecit quoddam warrant. suum *R. R.* & *T.* ballivis suis conjunct. & divisim virtute cujus war. prædict. *R.* & *T.* infranominat. *G.* apud *B.* in Com. prædict. infra libertat. prædict. die Lunæ 20. die, &c. arrestaver. & eum usque Gaolum Domini Regis de *M.* salvo duci voluissent, & super hoc prædict. *G.* cum multis aliis, modo guerrino arraiat. prædict. die, anno & loco in prædict. *R.* & *T.* vi & armis, videlicet gladiis, &c. insult. & rescussum fecer. & eos adtunc & ibidem verberare & vulnerare voluissent, & sic prædict. *G.* à custod. Ballivi præd. evasit, & eum nunquam postea in balliva sua invenire potuit. **See Chapter Rescous in this Supplement.** Rescous ret. per ball. libertat.

Qui dicunt super Sacramentum suum; quod *A.* in brevi prædict. nominat. die redditionis Judicij in eodem brevi mentionat. scilicet die, &c. seisit. fuit in Dominico suo ut de feodo, de & in Manerio de *D.* cum pertin. in Com. prædict. ac de & in uno capital. messuagio, cum pertin, &c. (**and so go over all the Lands in common form**) ac de & in toto illo annuali reddit. sive feodo firmo, triginta & quinque librarum legalis monetæ *Angliæ*, execun. sive reservat. de vel ex scitu domus mantionalis Manerij de *H.* in Com. prædict. cum suis pertinentiis universis, ac omnibus & singulis illis terris Manerio de *H* prædict. spectan. ac omnibus illis terris prat. pasc. & pastur. dominical. eidem Manerio, cum suis Juribus, membris & pertinen. universis in Com. prædict. annuat. ad festa sancti *Mich. Archang.* & Annunciat. beatæ *Mariæ* Virginis, per æquales portiones solvend. ac de & in toto illo annuali reddit. sive feod. firm. decem librarum legalis, &c. execun. sive reservat. de aut pro redditibus assise liberorum & customar. tenen. prædict. Manerij de *H.* & pro communi fine ejusdem Manerij de *H.* in Com. prædict. annuat. ad festa supradict. per æquales portiones solvend. & Jur. prædict. super Sacramentum suum prædict. ulterius dicunt, quod prædict. separales annuales reddit. 35 l. & 10 l. valent. clare per ann. in omnibus exit. ultra reprisf. 40 l. & sunt una medietas præmissorum prædict. per Inquisitionem præd. superius compert. Quos quidem separales annuales reddit. 35 l. & 10 l. Ego præfat. Vic. dict. die caption. hujus Inquisitionis, virtute brevis prædict. *J. W.* in eodem brevi nominat. per extent. prædict. liberari feci, per extent. prædict. tenend. sibi & assignatis suis, &c. prout, &c. **in Common form.** *A Fee-farm Rent extended.*

Fuit seisit. in Dominico suo, ut de libero tenemento pro termino vitæ suæ, de una annuitate sive annuali reddit. 20 l. execun. de &c. ad festa, &c. per æquales portiones solvend, &c. *Mich. 23. 24. Eliz. Roll. 801. in Co. Banco. Vide Croke 2. part. fol. 78.* *An Annuity extended.*

Justic. infrascript. certifico, quod quoad distringend. *A, B.* & cæteros Juratores in hoc brevi nominat. breve istud. adeo tarde mihi liberat. fuit, quod propter temporis brevitatem executionem inde facere Tarde quoad distr. Jur. executed, quoad tales.

 non

non possum, sed quoad ponend. decem talium, unde in brevi prædict. fit mentio execut. inde patet, in quodam panello huic brevi annex. The panel of Ten. Quilibet Jur. prædict. per se attach. est, per pleg. *J. D.* & *R. F.*

Al. breve de proclam. Vic. retorn. un foits proclam. fuit, & tarde quoad resid. execut. unde.

Virtute &c. Ad Com. meum *E.* tent. apud Castrum *E.* 20 die Junij, anno infrascript. proclam. feci prima vice, quod infranominat. *W.* se redderet Vic. *London*, ita quod iidem Vic. haberent corpus ejus coram Justic. &c. ad diem & locum infracontent. ad respondend. infranominat. *C.* de placito infrascript. & quod plenam executionem istius brevis nihil ulterius actum est per me præfat. Vic. pro eo quod post receptionem istius brevis ac ante retorn. ejusdem, non fuerunt plur. Com. in eodem Com. *E.* tent. nec generalis sessio pacis tent. fuit in partibus *C.* in brevi prædict. specificat. Et sic breve istud adeo tarde mihi liberat. fuit, quod propter temporis brevitatem illud exequi non possum.

Sur Ex. fa. quod le Coron. fuit absent.

Quarto exact. fuit & ad eundem Com. *J. M.* & *C. D.* Coronatores Domini Regis Com. prædict. solempnit. exact. non vener. Ideo ad executionem brevis prædict. ob eorum defect. ulterius ibidem procedere non potui.

Quod fuit but one Coroner, qui refuse to pronounce le utlary.

Quinto exact. fuit & non comper. & quia null. ibidem interfuer. Coron. Domini Regis Com. præd. præter. *A. B.* Coron. Domini Regis in partibus de *S.* qui quidem *A.* Iudicium Utlagarie in hac parte promulgand. ibidem reddere recusavit. Ideo de ulteriori executione brevis prædict. per me nihil actum est ad præsens.

Al. bre. de visum dote, ur. retorn. quod nullus & cum ad habend. visum, &c.

Certifico, quod infranominat. *W.* nec aliqua persona vel personæ pro eo, vel ex parte sua non venit mihi meove sub Vic. vel deputat. meo, ad habend. visum de Manerio infrascript. cum pertin. Ideo non potui causare ipsum *W.* habere visum de Manerio illo, prout per breve illud mihi præcipitur.

Precept del Tolt.

A. B. Vic Com. prædict. Ballivo Domini Regis & meo in Com. prædict. itineranti saultem, ex parte Domini Regis tibi præcipio firmit. injungend. quod in propria persona tua accedas ad Cur. *C. D.* Ar. Manerij sui de *S.* & loquelam quæ est in eadem Cur. per breve Domini Regis de *Recto paten.* inter *F. G.* et *M. P.* de tribus Messuagiis, *&c.* in *C.* tollas et illam habeas in Com. meo apud *N.* *die Lunæ*, *&c.* prox. futur. tenend: et sum. per bon. sum. præfat. *M.* et *P.* quod tunc sint ibi præfat. *F.* inde responsur. et habeas ibi sum. et hoc præcept. dat. in Com. meo apud *N.* die Lunæ 2. die Maij Anno, *&c.* Quia prædict. *M.* est unus ballivorum qui Cur. prædict. tenent. per quod prædict. tenent. per quod prædict. *F.* rectum in Cur. illa consequi non possit.

Vel sine brevi, *as the case is.*

The like to remove any plaint, mutatis mutandis, **and in every such Tolt a special cause must be assigned in the precept, as favour, &c.**

Retorn. seisina in Dote.

The particulars

Virtute istius brevis mihi direct. et huic Schedul. annex. (tali die et anno) habere feci *N. H.* et *A.* uxori ejus, in brevi prædicto nominat. plenariam seisinam suam, de tertia parte terrarum & tenementorum cum pertin. in eodem brevi specificat. (videlicet) de una aula, uno parvo introitu, una porticu, uno conclavi, uno promptuario, (Anglice **a Buttery**) una domo lactuaria, (Anglice **a Milk-house**) et una parva area, parcell. unius Messuagij in brevi prædicto content. modo in tenura sive occupatione *I. F.* in eodem brevi nominat. cum liberis ingressu, egressu, et regressu, in, ad et ab eisdem; Ac etiam de occidentali parte, unius pomarij, in eodem brevi specificat. continen. per æstimationem septem virgat. in longitudine, et quatuor virgar. in latitudine, necnon de duabus acris et dimidij unius acræ terræ, parcell. octo acrarum terræ cum pertin. in brevi prædicto content. jacen. et existen. in australi parte, et fine earundem octo acrarum

terr

terræ, ac modo vel nuper in tenura sive occupatione prædicti *I. F.* vel assign. suorum, cum liber. ingressu, & egressu, regressu in, ad & ab eisdem, tenend. præfat. *N.* & *A.* in separalitate, per metas & bundas, nomine totius dotis prædictæ *A.* ipsi præfat. *A.* de tent. in brevi prædict. specificat. post mortem *P. L.* in eodem brevi nominat. contingen. prout per breve prædict. mihi præcipitur.

Tenend. per metas & bundas.

Note, the Sheriff for his own safety before he makes retorn of this Writ, shall take the hand of the Atturney who prosecutes the Writ, to the draught or copy of this retorn, thereby desiring the Sheriff to make the retorn, and declaring therein that he and his Client will be therewith content.

Pro executione istius brevis fiend. mandavi Ballivo libertat. &c. ut supra; qui quidem Ballivus, (videlicet) *A. B.* mihi respondet, quod ipse virtute præcepti mei prædict. sibi inde direct. 10 die, &c. cepit in manus Domini Regis tent. infrascript. cum pertin. per visum *A. B. C.* & *D.* proborum & legalium hominum de libertat. predict. ac quod summ. infranominat. *R.* essendi coràm Justic. infrascript. ad diem & locum infracontent. (videlicet) per *W. M. R. T.* & *C. D.*

Mandavi Ball. & ipse resp. &c

Grand cape in Formedon.

Infranominat. quer. non invenit mihi pleg. de prosequend. loquelam suam infrascript. Ideo quoad execut. istius brevis nihil per me actum est.

Al. orig. que non inven. Vic pleg. de prosequend.

Virtute, &c. per *Antonium B.* & *Tho. N.* probos & legales homines de Balliva mea, scire feci *Leonardo G.* tenenti unius Messuagii, unius domus Anglice vocat. **a Forge**, centum acrarum terræ, viginti acrarum prati, viginti acr. pastur. viginti acr. bosci, & viginti acrarum jampnorum & bruer. cum pertin. scituat. jacen. & existen. in parochia de *W.* (**or,** *Parochiis de W. F. & S.*) in Com. *Sussex*, que fuer. terr. & tenement. infranominat. *I. B.* De quibus idem *I.* die redditionis judicii infrascript. & postea seisit. fuit in Dominico suo ut de feodo, quod sit coram Domino Rege infrascript. ad diem & locum infracontent. ad ostended. in forma infrascript. & ulterius ad fac. & rec. prout illud breve in se exigit & requirit: Et nulli sunt hæred. neque est aliquis hæres prædict. *I.* nec sunt aliqui tenentes, nec est aliquis tenens aliquorum al. terrarum vel tenementorum, que fuer. predict. I. tempore redditionis judicii predict. vel unquam postea in Balliva mea, cui vel quibus scire facere possum. (Vide **Chapter Retorn in this Supplement.**)

Scir. feci vers. terr-tenen.

Infranominat. *A.* nihil habet in Balliva mea, per quod distringere potest, nec est invent. in ead.

Non habet aliqua terr. seu tenementa, bona seu catalla in Balliva mea, per quod distringere potest.

Nihil *to the* distr. *in* Audita querela. Aliter.

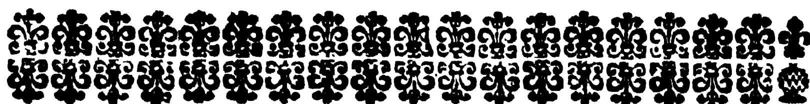
Infranominat. *A.* district. est per unum equum precii 5 l. & similiter infranominat. *B.* district. est per unam peciam panni ad valenc. 10s.

District. est per bona.

Manucapt. *A. B.* & utriusque eorum { *Johannes Doo* per se, *Richardus Roo.* }

Nota, See Dyer 199. **The Sheriff retorns to the Original, that the Defendant was attached** per catalla ad valenc. &c. **but did not retorn what cattel** in specie, **and it was there held that the retorn was insufficient, because the cattel by which the Defendant is attached, are forfeited to the King, at the day of the retorn, if the Defendant makes default.**

Attached per catalla ad valenc. *but doth not retorn what cattel.*



CAP. 6.

Escape.

SECT. 1.

Where the Sheriff shall be chargeable therewith, and where the Bailiff; and what shall be adjudged an Escape, and how the Sheriff may discharge himself by act in Law, &c,

First, Where the Sheriff shall be chargeable for Escapes, and where the Bailiff, &c.

A Serjeant suffers a prisoner taken upon a plaint to Escape, he only is chargeable.

The Sheriff is Judge, not an Officer of that Court, though Goaler of the Compter.

If a plaint is levyed in the Sheriffs Court in London, and thereupon a Serjeant at Mace takes the Defendant, and in carrying of him towards the Compter, the Prisoner Escapes, here the Serjeant only is lyable to an action for this Escape, and not the Sheriff: because the prisoner not being within the walls of the Compter, was never in the Sheriffs custody: The Sheriff is the Judge of that Court, and not a Ministerial Officer to execute Process there; but he is Gaoler of the Compter, and ought to answer for all Prisoners there. Dun vers. Pary Mich. 13 Car. in B.R. Rolls tit. Escape 806

Yet it is otherwise upon an arrest upon a Lat. for if an Escape is suffered, there the Sheriff is chargeable.

But if a Serjeant at Mace arrest a man by vertue of a Warrant issuing out upon a Latitat, and afterwards suffers him to Escape, before he brings him to the Compter; here in this case an action lyes against the Sheriff only for this Escape, because he was in the custody of the Sheriff presently upon this arrest; and the Sheriff is the Officer of the Court of Kings Bench, and not the Serjeant. Ibidem.

Where a Bailiff-errant is chargeable.

Where an under-sheriff is chargeable.

Yet for a Bailiffs insufficient return, the Sheriff is chargeable.

But if a Bailiff *Itinerant* take a man in Execution, and he suffer him to Escape, an action lyeth against the Bailiff himself; so likewise it is in case of an Under-sheriff: for it may be the High-sheriff knew nothing of the matter, because the Writ was delivered to the Under-sheriff and he took a fee for it, and therefore it is reason that he should be punished: But if a Return made by a Bailiff be insufficient, there the High-sheriff shall be amerced. Per Snag Justice, Int. Marsh & Astrey, Leon. 1 part. 146.

If I. S. puts his own name in a warrant, and suffers an Escape, the Sheriff is not chargeable herewith.

But if the Sheriff directs his Warrant to his Bailiff, and afterwards I. S. puts in his own name, as special Bailiff, and thereupon arrests the Defendant, who Escapes; here I. S. shall be only chargable, and not the Sheriff, because the Defendant was never in the Sheriffs custody, but only in the custody of I. S. Brown vers. Adams, Cr. El. 745.

What

What shall be an Escape in the Sheriff or Gaoler, &c.

Frosts case, 5 R. 89.

If the Sheriff hath one in his custody, against whom one B. hath a Judgment, if B. while the party is in the Sheriffs custody, bring a Ca. Sa. to the Sheriff, and desire him to detain him by virtue thereof and the Sheriff refuses, but suffers him to go at large; It was held by the Court, that it was an Escape in Law, for which an action well lyes.

It is an Escape for the Sheriff, not to charge a prisoner in Execution, after an Execution delivered to him.

Norgates case, Tr. 13 Jac. per Cook Rolls tit. Escape 810.

A man recovers against two joyntly, and takes both of them in Execution, and afterwards one of them is suffered to Escape: The Sheriff is lyable to an action for this Escape, though the other continue in prison, & the whole Debt shall be recovered against the Sheriff.

A Judgment is had against two, one of them Escapes, the Sheriff shall pay the whole Debt.

Dr. Sutcliffe vers. Sir Geo. Reynell, Tr. 13 Jac. Rolls tit. Escape 810.

So likewise where a man recovers against a man and his wife, and takes them both in Execution, and the wife Escapes; the Sheriff shall be charged with this Escape, and the whole Debt shall be recovered against him, though the husband continue in prison.

Judgment against husband and wife, they are both taken, the wife Escapes; the Sheriff shall pay the whole Debt.

The Sheriff of Essex his case, Hob. 202.

If a Prisoner is willingly let out of prison by the Sheriff or Gaoler, and afterwards of his own accord, comes into the prison again, yet this is an Escape in Law, for which the Sheriff is chargeable: For the prisoners rendring of himself again, hath not purged the Escape.

For a prisoner to be let out of prison, although he return again, is an Escape.

What liberty a Prisoner in Execution may have upon a *Hab. Corp.*

Mich. 14 Car. Cr. Car. 14. Balden vers. Temple, Mic. 15 Jac. Hob. Rep. 202.

Although when a Hab. Corp. is granted for a prisoner in Execution, it is not justifiable for the Marshall by colour thereof, to let the Prisoner go at large with his Keeper in the vacation or Term time untill the appointed time when he is to return to prison; for the prisoner Keeper shall have only a convenient time to bring the Prisoner in Court and to carry him back to prison again; and if they shall let him go at large any longer time than is convenient, it is an Escape.

upon a Hab. Corp. *in the vacation, the Sheriff must not let the Prisoner go at large, without his Keeper.*

what time the Sheriff is allowed to bring in his Prisoners.

Nota, the Court is to judge how long time is convenient to bring a Prisoner before them, and how long time is sufficient to return him again.

Trin. 12 Car. Cr. Car. 466.

So likewise afterwards in Tr. 12 Car. it was held by all the Justices and Barons, that an Hab. Corp. was an antient and legal Writ, yet under colour thereof, the Warden of the Fleet, nor Marshall, &c. ought not to suffer Prisoners to go at large; for such permission is an abuse of the Writ, and an Escape in the prison Keeper: which resolution, the Book saith, the Kings approved very well of, and command it to be observed.

Smalls case, Bulstr. 2 R. 148. Platts case, Plo Com. 36. Dyer 66.

Per Cook Chief Justice, Prisoners sub custodia, are not to go out of the prison by bail & baston, unless it be by commandment of the King, or of the Kings Writs, or by agreement of the parties, and not otherwise; and such kind of liberty given to them by their Keeper, without any such former warrant is clearly an Escape in Law.

Prisoners in Execution must not stir out of the Prison without a Hab. Corp.

It

How the prisoner is punishable for an Escape.

It was resolved by the whole Court, That although a Prisoner depart from prison with his Keepers licence, yet it is an offence as well punishable in the Prisoner, as in the Keeper: And Calthorp made this difference betwixt breach of Prison, and Escape; the first is against the Gaolers will, the other is with his consent, but in both cases the Prisoner is punishable; whereunto the whole Court agreed.

Sir Miles Hobert, and Sir Will. Strouds case, Cr. Car. 209.

Escape lies against a sworn Deputy-Marshal.

A Deputy-Marshall who was sworn in open Court, licenced a Prisoner charged in Execution, to go into the Country with a Keeper; and it was adjudged, that although he was but Under-Marshall, yet he was chargable, and the action well brought.

Gawdyes case, Dyer 278.

Where Fresh suit shall be well made, and how the Sheriff shall be bischarged thereby.

Where fresh suit is a good plea.

Debt was brought against the Marshal, for suffering a Prisoner in Execution to Escape; he pleaded, that the Prisoner broke prison and escaped, and he freshly pursued her, and took her again in fresh suit; and to this plea the Plaintiff demurred: And the Court held, that this was not any plea, because by the action here brought, a voluntary permission ire ad largum is implyed, which is neither denied nor traversed; and if the Sheriff voluntarily permits a Prisoner to go at large, he cannot re-take him; and so this reprisal as is alledged being after the action brought, is no plea.

Whiteing vers. Sir Geo. Reynell, Cr. Jac. 657, 658.

Escape. *Fresh suit.* *Night.* *Retaken before the action brought.*

Debt against the Sheriff for the Escape of a Prisoner in Execution; the Defendant pleads, that the Prisoner escaped the 16th. of Dec. and that he freshly pursued him, and re-took him the 17th. of Dec. and retained him in Execution again; and thereupon it was demurred, and objected, that this was no excuse; but per Curiam the Sheriff is not lyable to this action, for here the Sheriff used his endeavour, and took him again upon fresh suit, although that in the night or otherwise he migh lose the sight of him. But if before he be re-taken, an action is brought against the Sheriff for the Escape, then the re-taking of him afterwards shall not avoid the Plaintiffs action, although the re-taking be upon fresh suit.

Grills vers. Ridgeway, Cr. El. 439. Tr. 2. Car. Ro. 1179. B. R. Harvey vers. Sir Geo. Reynell, accord. Trin. 13. Car. Ro. 1107. In B. R. Burford vers. Somes & Gayer, accord.

The Goaler makes fresh suit so soon as he hath notice of the Escape, and good enough.

If a Prisoner escape out of prison by the negligence of the Keeper and is absent by a day and a night; and the Keeper doth not know this, but afterwards when he hath notice of this Escape, he makes fresh suit and re-takes the Prisoner, this is a good fresh suit, and shall excuse him.

Mich. 10 Car. B.R. Hinton vers. Sir Jo. Lenthall, Rolls tit. Escape 809

So likewise where a prisoner escaped at nine of the clock at night and was re-taken the next day immediately after notice, (viz.) at five of the clock in the morning, upon fresh pursuit: Et per Curiam this is a good fresh pursuit.

Elton vers. Sir Jo. Lenthall, Tr. 10 Car. in Br. Ro. 627. Rolls tit. Escape 809.

Reprisal upon fresh suit, a quarter of a year after the Escape.

A Prisoner in Execution, by practice procured an Hab. Corp. to be removed before Cooke Chief Justice, at the Assises in Kent, and then he escaped, and afterwards in Easter Term following, the Bailiff re-took him, and thereupon he brought an action of false imprisonment: And the Court was of opinion, that the fresh suit made was good, although he re-took him the next Term after the Escape, if enquiry were made after him: And by consequence it was adjudged, that the action of false imprisonment did not lye against the Bailiff.

Stones case, Goth. M. 8 Car.

Garnoon vers. Layton, cited in Yel. Rep 20 int. Jenings & Hartley, Cr. El. 706, 707. Bonner vers. Stockly, Cr. El. 652. accord. and Edden. vers. Loyd Cr. El. 877. accord. Dr. Druries case, 8 R. 142. b. Hob. Rep. 206. accord.

The Plaintiff may bring an Escape against the Sheriff, where the Defendant was taken upon a Ca. Utl. after Judgment, and Escaped.

If a man be taken upon a Cap. Utl. after Judgment, he is in Execution for the party, and if he Escape, although that he was taken at the Kings suit, yet the party hath such an interest in his body, that he shall have an Escape against the Sheriff.

When a Prisoner is taken by an erroneous Process.

Where a Prisoner is taken upon an erroneous Judgment, and Escapes, yet the Sheriff is chargeable.

Nul tiel Record *a good plea for the Sheriff.*

Sheriff shall not take advantage of Error in Process.

If after the original Judgment is reversed, before a Judgment had against the Sheriff, the Sheriff is discharged; but if another Judgment is recovered against the Sheriff, before the first Judgment reversed, then he is still chargeable.

There is a diversity between collateral things executory, and executed; for if a man is taken in Execution upon an erroneous Judgment, and Escapes, and afterwards the Judgment is reversed by Writ of Error, the action for the Escape is gone; for he may plead nul tiel Record, because without Record the action is not maintainable, but untill the erroneous Judgment or Execution is reversed by Writ of Error; the Sheriff or Gaoler shall not take advantage thereof, for there he cannot plead nul tiel Record, because untill it is reversed by the award of the Court, it remains in force, although it be manifest Error: But if the Plaintiff brings an Escape against the Sheriff, and hath Judgment and Execution thereupon, and afterwards the first Judgment is reversed, yet because that this Judgment upon this collateral thing is executed, it shall remain in force notwithstanding the reversal of the first Judgment.

Burton vers. Eyre, Cr. Jac. 288, 289.

Cancellarius Lancastr.

Escape.

Precept.

Variance.

So likewise it hath been adjudged, where a Testat Ca. sa. was directed to the Chancellor of Lancaster, that he should command the Sheriff to take the body of the Defendant, ad satisfaciend. &c. Ita quod prædict. cancellarius haberet corpus def. &c. And thereupon the Chancellor commanded the Sheriff, that he should take the Defendant, ita quod the Sheriff should have him coram Justiciariis, &c. And then the Sheriff arrested the Defendant, and afterwards permitted him to Escape, for which Escape the Plaintiff brought his action, and had a verdict: And it was moved in arrest of Judgment, that the Precept directed by the Chancellor to the Sheriff, was not warranted by the Writ directed to him, for it varies from the command; for it ought to have been, that the Sheriff should have the body of the Prisoner before the Chancellor, ita quod he shall have him before the Justices; and the Warrant is that the Sheriff himself should have him before the Justices: Sed non allocatur; for per Curiam, although there be Error in the Process, the Sheriff cannot take advantage thereof, but having suffered him to Escape, he is answerable to the party.

Ognell vers. Baston, Cr. El. 164, 165.

The Sheriff must not take advantage of Error in Process.

Recogn.

2. Sci. fa.

Ca. Sa.

Likewise upon a Recogn. in Chancery, 2. sci fa. being issued out and returned, several Questions did arise:

1. The first Question was, whether a Ca. sa. lay or no.

2. The second Question was, admitting the Ca. sa. was not grantable, whether it be void, or only erroneous, so as the party must avoid it either by Audita querela, or Error.

3. The third Question, a Prisoner is in prison for suspicion of Felony, whether or no he may be charged in Execution by vertue of a Ca. sa.

As to all these points the Court resolved:

1. That

Ca. sa. where it lies upon a Recogn. in Chancery.

1. That the Process was well awarded, and maintainable by Law, for it being a Debt upon Record, it is not reason but the body should be as lyable to Execution upon it, as to a common Obligation.

An Erroneous Writ is not void but voidable by Error. Sheriff.

2. To the second Question, it was resolved, admitting the Ca. Sa. lay not, yet it is not void, but erroneous: and this the Sheriff shall not dispute, nor take advantage of; for it was a good Warrant for him to take the body, and false imprisonment lyeth not against him therefore. Conyers Sheriff of Durhams case, Cr. El. 576. accord. Keysar vers. Tyrrel, Bulstr. 2 R. 256 acc.

Execution may be executed upon a prisoner for Felony.

3. To the third Question, it was resolved, that the Execution was well served upon him in prison, for although his body was at the Kings pleasure, yet he shall not take advantage of his own Tort, (no more shall the Sheriff) but he shall answer the action or Execution of a common person.

I shall add but one case more, 'tis a case touched upon both in Cr. Jac. fo. 3. and Yel. fo. 42. both which Books seem to differ; but I find not any resolution of this case, except in this Book only: wherein in an Action of Debt brought against a Sheriff for an Escape, the Case was thus. Upon a Recognisance acknowledged in Chancery, 2. Sci. fa. were issued out and retorned; after that there issued out a Levari fac. upon which a Nulla bona was retorned; afterwards the Plaintiff obtained a Ca. Sa. and thereupon took the party in Execution, whom the Sheriff afterwards suffered to Escape; thereupon this Action was brought. Weaver vers. Clifford, Bulst. 2 R. 62, 63, &c.

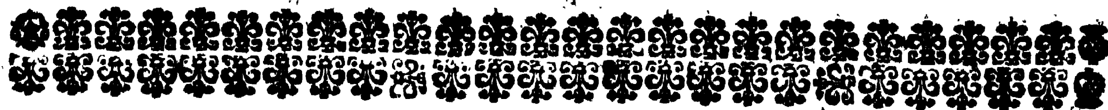
Recogn. 2. Sci. fa. Levari fac. Ca. sa. Escape.

The Book says, that the Court inclined to be of opinion, First, That that Capias did well lye. Secondly, That the Sheriff was chargeable with the Escape. But afterwards the Reporter puts it out of further dispute, for he says that Judgment was given for the Plaintiff. Weaver vers. Clifford, Bulstr. 2 R. fo. 64. fo. 65.

Capias upon a Recogn. Sheriff chargeable

Deus

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